

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**

**REFERENCE NO. 20 OF 2022**

(Reference from the Decision of the Taxing Master in Bill of Cost No 169 of 2021  
by Hon. M.B Mpaze, DR dated 8 June 2022)

**MBARAKA MIRAJI.....1<sup>ST</sup> APPLICANT**  
**SALAMA MIRAJI.....2<sup>ND</sup> APPLICANT**  
**MAGNUS M. MHICHE.....3<sup>RD</sup> APPLICANT**  
**VERSUS**  
**OMARY HAMIS UNGAUNGA.....RESPONDENT**

**RULING**

*Date of last Order: 29/11/2022*

*Date of Ruling: 16/12/2022*

**K. D. MHINA, J.**

This reference arises from Bill of Cost No.169 of 2021, wherein the Taxing Master taxed the bill at a tune of TZS 260,000/= against the applicants.

The reference was brought by way of chamber summons made under Order 7 (1) of the Advocates Remuneration Order, G.N No 264 of 2015 supported by the joint affidavit deposed by the applicants.

The order being sought is for this Court to reverse the decision of the Taxing Master, costs of the application and any other relief this Court deems just and fit to grant.

The ground of the application, as expounded in paragraph 4 of the joint affidavit, is that the applicants were under legal aid from the Legal and Human Rights Centre; therefore, they were exempted from costs.

At the hearing, both parties appeared in person, unrepresented, except the third applicant, who was absent even though jointly with the first and second applicants; they are the ones who lodged this reference.

In support of the reference, the second applicant submitted that the reason to challenge the decision of the taxing master is that they were not supposed to pay costs because they were under legal aid from the Legal and Human Rights Centre.

Further, the taxing master taxed TZS 150,000/=, which was not pleaded in the application for the bill of cost.

She concluded by submitting that the respondent was awarded TZS 30,000/= for attendance even though he was using a motorcycle transport commonly known as "bodaboda" from Mbagala, the place where even the taxi fare was only TZS 10,000/=

On his part, the first applicant had nothing to add apart from supporting what was submitted by the second applicant.

In reply, the respondent submitted that it was not true that the applicants were under legal aid. He said the applicants had the ability to pay, but they don't want to pay.

Further, he submitted that previously the applicants had hired the services of advocates, but after they lost all cases, they started to file cases under the umbrella of legal aid.

In a brief rejoinder, the second applicant submitted that all cases they filed were under legal aid. Further, she had no ability to pay the costs awarded.

On his part, the first applicant had nothing to rejoin.

Having considered the chamber summons and its supporting affidavit, the affidavits in reply, and the oral submission made by the

parties, the issue that has to be resolved is whether the decision of the Taxing Master can be reversed based on the ground that the applicants were under legal aid from the Legal and Human Rights Centre; therefore, they were exempted from costs.

This issue should not detain me long because the answer is in the decision of this Court in Land Appeal No 140 of 2021 between the parties, the matter which triggered the Bill of Cost No 169 of 2021 subject to this reference.

Canvassing through the Judgment in Land Appeal No. 140 of 2021, I found that the appeal was dismissed with costs on 23 August 2021. This Court held that;

*"Basing on the foregoing there are no sufficient reasons given by the applicant to enable this court to set aside its dismissal order. In that regard, this application lacks merit, and I proceed to **dismiss it with costs**".*

**[Emphasis provided]**

Therefore, from above, it is quite clear that the respondent was awarded costs in Land Appeal No. Land Appeal No 140 of 2021. Then the respondent lodged the bill of cost to claim for the awarded costs.

Usually, the process of the bill of cost starts when a successful litigant, if awarded costs, presents in court a bill of costs of the amount spent in prosecuting or defending the suit in court.

The duty of the Taxing master is to hear and determine the bill of costs in accordance with the governing rules and procedure. In that line, the Taxing master has no mandate to alter or not execute the order awarding costs.

If a party to the suit is dissatisfied with the costs awarded, the remedy is to challenge that decision awarding the costs.

Therefore, flowing from above, the Taxing Master in Bill of Cost No 169 of 2021 was right to hear, deliberate, and decide the bill before her. The applicants were supposed to challenge Land Appeal No 140 of 2021, which awarded costs.

The recourse the applicants opted in challenging the awarded costs is not proper. Costs granted and awarded in the suit cannot be

challenged in the application for a bill of cost or by way of reference against the decision of the Taxing Master.

Apart from that, the applicants also raised two issues challenging the decision of the taxing master. These issues are, **one**, the taxing master taxed TZS 150,000/=, which was not pleaded in the application for the bill of cost, and **two**, the respondent was awarded TZS 30,000/= for attendance even though he was using a motorcycle transport commonly known as "bodaboda" from Mbagala, the place where even the taxi fare was only TZS 10,000/=

Having gone through the chamber summons and the supporting affidavit, I discovered that the applicants are trying to "smuggle" those issues while they were not raised in the pleadings. In **YARA Tanzania Limited versus Charles Aloyce Msemwa and 2 Others**; Commercial Case No. 5 of 2013: (Unreported), it was held that:

*"It is a cardinal principle of the law of civil procedure founded upon prudence that parties are bound by their pleadings. That is, it is settled law that parties are bound*

*by their pleadings and that no party is allowed to present a case contrary to its pleadings”.*

Therefore, this court ignores the two issues the applicants raised during the submission and treats them as an afterthought as they were never pleaded.

In the final analysis, for the foregoing reasons, the applicants have failed to move this court to interfere with the decision of the Taxing Master.

Consequently, the reference is thus dismissed for lack of merits.

The applicants shall not be condemned to costs because they were under legal aid by the Legal and Human Rights Centre, and they filed this reference in *forma pauperis*.

It is so ordered.



**K. D. MHINA  
JUDGE  
16/12/2022**