

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

REFERENCE NO. 2 OF 2022

(Originating from the Decision of Hon. L. R. Rugarabamu, Taxing Officer in Bill in the Bill of Costs No. 350 of 2021 of Costs Misc. Application No. 1009 of 2021 as well as No.27, in the District Land and Housing Tribunal for Ilala. Arising from the Land Appeal No. 46 of 2020)

ZAKIA YAHAYA APPLICANT

VERSUS

SAID KIKA RESPONDENT

RULING

Date of last Order: 03.06.2022

Date of Ruling: 08.06.2022

A.Z.MGEYEKWA, J

This is a reference that emerged from a ruling of a Taxing Master, Hon. L. R. Rugarabamu. The application is made under Order 7 (1) and (2) of the Advocates Remuneration Order GN.264 of 2015. The application is supported by an affidavit deposed by Mr. Zakia Yahaya, the applicant. The

respondent filed his counter-affidavit out of time without obtaining leave from the court, therefore. the same is disregarded.

When the matter was called for hearing on 16th June, 2022 the applicant enjoyed the legal service of Mr. Selemani Matauka, learned counsel, and respondents had the legal service of Ms. Ashura Mansoor, learned counsel.

The applicant in his Chamber Summons prayed for the following orders:-

- i. That, this Honourable Court be pleased, by way of reference, to quash and set aside the decision of the Taxing Officer in the Bill of Costs No. 350 of 2021, delivered on the 31st day of January, 2022, and an Order for the determination of the said Bill of Costs to its finality, on grounds that:-*
 - a) That, the Taxing Officer erred in law and fact by holding that the said Bill of Costs is time-barred.*
 - b) That, the Taxing Officer erred in law and fact in dismissing with costs the said Bill of Costs for the reason that the same was filed out of prescribed time.*
 - c) That, the Taxing Officer erred in law and fact by calculating the time limit to file the said Bill of Costs from the date of the pronouncement of the Judgment (that is 18th May, 2021), instead of the date on which the Judgment and Decree were ready for collection (that is 15th June, 2021).*

- d) That, the Taxing Officer erred in law and fact for not taking into consideration the principle of Automatic Exclusion of time spent in waiting for the supply of the copies of Judgment and Decree.*
- ii. Any other Order(s) as this Honourable Court may deem fit and just grant.*

At the hearing, the applicant enjoyed the service of Mr. Selemani Matauka, learned counsel while the respondent enjoyed the service of Ms. Ashura Mansoor, learned counsel.

The applicant began by tracing the genesis of the matter which I am not going to reproduce in this application. On the first ground Mr. Selemani, submitted that the District Land and Housing Tribunal for Ilala erred in law and facts by deciding that the Application for Bill of Costs No. 350 of 2021 was filed out of time and was dismissed with costs. It was his submission that the Honourable Taxing Officer erred to start counting the 60 days of filing the Bill of Costs as provided under Order 4 of the Advocates Remuneration Order, 2015, GN. No. 264 of 2015 from the day of pronouncement of the Judgment in Land Appeal No. 46 of 2020 on 18th May, 2021. He added that while the judgment and its decree were signed, certified, extracted, and ready for collection on 15th June, 2021. Supporting

his submission he referred this court to the last page of the said Judgment and Decree appearing in the annexure Zakia -3 collectively.

Mr. Selemani went on to submit that the Taxing Officer did not consider the different legal principles and mandatory requirements to be fulfilled in any application for Bill of Costs among of the item is an observation of the recent principle of automatic exclusion of time in obtaining the certified copies of judgment and Decree which is mandatory document to be attached. Supporting his submission he cited the case of **Fastjet Airlines Ltd v John Mnaku Mhozya**, Misc. Civil Application No. 210 of 2017 HC at DSM. He also cited Order 4 GN. 264 of 2015 which set out the limits of filing the application for Bill of Costs. He went on to submit that the official stamp of the trial tribunal was dated 16th June, 2021 and the same is the date when the time started to run not 18th June, 2021. To buttress his contention he cited the case of **The Director of Public Prosecutions v Mawazo Saliboko @ Shagi & 15 Others**, Criminal Appeal No.384 of 2017 CAT at Tabora (unreported).

It was his further submission that the decision of the Taxing Officer to dismiss the Applicant's Bill of Costs is an erroneous one. He cited the case of **Indo- African Estate Ltd v District Commissioner for Lindi District & 3 Others**, Civil Application No.12/07 of 2022, CAT at Mtwara (unreported).

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to quash and set aside the decision of the Taxing Officer.

In response, Mr. Mwangwala, the learned counsel for the respondent submission based on point of law stated that the records from the District Land and Housing Tribunal for Ilala indicated that the copies of Judgment and Decree were ready for collection on 18th May, 2021 which was the date of delivering the decision. He added that the Judgment was delivered, signed, and certified on 18th May, 2021. Supporting his submission he referred this court to pages 9 and 10 of the impugned decision. He strongly submitted that since the copies were certified, signed, and sealed with the tribunal on 18th May, 2021, means the copies were ready on that day to be supplied to the parties. He continued to submit that the applicant was supplied with the copies of judgment and decree on 15th June, 2021 as alleged, and she was remained with 33 days to file the Bill of Costs as provided under Order 4 of the Advocate Remuneration Order, GN No. 264 of 2015 since counting from the date of delivering of the judgment to the time limit ended on 17th July, 2021.

On the strength of the above submission, the learned counsel for the applicant urged this court to dismiss the application with costs.

In rejoinder, the learned counsel for the applicant maintained his submission in chief. He added that it is misleading to state that the judgment was ready for collection on 18th May, 2021. He stressed that the impugned judgment was pronounced on 18th May, 2021, and the Judgment and Decree were certified, extracted, and ready for collection on 15th June, 2021. He insisted that Order 4 of the Advocates Remuneration Order of 2015, GN. No. 264 of 2015 is a general provision that set out the 60 days limit of applying for the Bill of Costs. He urged this court to grant the application and event costs to follow the event.

Having considered the arguments for and against the application, I remain with one central issue for determination, and that is none other than ***whether or not the present application is meritorious.***

Reading the records of the tribunal in Misc. Application No. 350 of 2021, first of all, it is evident that the tribunal upholds the objection raised by the respondent's counsel that the application is time-barred. It is in the record that the impugned Judgment was delivered on 18th May, 2021, and as per the judgment in Appeal No. 46 of 2020, the judgment was certified, signed, and stamped on 15th June, 2021 which is the date of collecting the said certified copies and the applicant filed the Bill of Costs on 23rd July, 2021. Thus, I do differ with the respondent submission that the judgment was

signed and sealed by the Chairperson on 18th May, 2022. In the instant application the law governing Bill of costs is the Advocates Remuneration Order GN. 264 of 2015 in particular Order 4 which provides that:-

*“ A decree holder may within sixty days **from the date of an order** awarding costs lodge an application for taxation by filing a bill of costs...”*

Guided by the above provision of law it is vivid that the order is self-explanatory and the same applies in matters related Bill of Costs. The days started to run from the date of order. However, the record reads that the judgment was ready for collection on 15th June, 2021. Counting the days from 15th June, 2021 to the date of filing this application on 23rd July, 2021 only 38 lapsed dates prescribed by law expired on 14th August, 2021. The statutory period of 45 days started to run from the date when the applicant obtained copies of Judgment and excludes all the period requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed. In counting the days whether is the Bill of costs was lodged within time or not I am guided by the Court of Appeal of Tanzania decision in the case of **Lazaro Mpigachai v R**, Criminal Appeal No. 75 of 2018, the Court of Appeal among other things ruled out that:-

"The petition of appeal was filed 20 days later, that is, on 7/2/2017, thus, this was also filed on time. In the Circumstances, certainly, the Appeal was within time."

Applying the above authority in the application at hand, the statutory period of 60 days started to run from the date when the applicant obtained copies of certified Judgment. Therefore, in my considered view, the application for the Bill of Costs No. 350 of 2021 was filed was filed within time. Therefore, I do differ with the findings of the District Land and Housing Tribunal for holding that the application is time-barred.

In the upshot, the application is allowed and the Bill of Costs No. 350 of 2021 is restored before the District Land and Housing Tribunal before another Chairperson to proceed with hearing.

Order accordingly.

DATED at Dar es Salaam this 08th June, 2022.



AZIMGEYEKWA

JUDGE

08.06.2022

Ruling delivered on 08th June, 2022 in the presence of Mr. Selemani,
learned Advocate for the applicant and the respondent.




Z. MGEYEKWA

JUDGE

08.06.2022