

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

REFERENCE NO. 1 OF 2022

(Arising from the decision of Taxing Master (Hon. Chinyele, Chairperson) in Land Application
No. 494 of 2021 at Temeke District Land & Housing Tribunal)

OMARI MOSHI MKUMBA.....APPLICANT

VERSUS

LAWRENCE STANLAUS CHAO.....RESPONDENT

Date of Last Order: 23.06.2022
Date of Ruling: 25.07.2022

RULING

V.L. MAKANI, J

This is an application for reference of the bill of costs taxed at Temeke District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 494 of 2020 before Hon. Chinyele, Taxing Master.

The application is made under Order 7(1), (2) and (3) of the Advocates Remuneration Order, 2015 and is supported by the affidavit of Adnan Abdallah Chitale, Advocate having conduct of the matter for and on behalf of the applicant.

With leave of the court the application was argued by way of written submissions.

The submissions on behalf of the applicant were filed by Mr. Adnan Abdallah Chitale, Advocate. He said the Tribunal ordered the applicant to pay costs to the respondent to the tune of TZS 10,558,000/=. He said the applicant was, however, condemned unheard as there was illegality in the impugned bill of costs. He submitted that the bill of costs was time barred but the Tribunal ignored this fact even after the matter was brought to the attention of the Taxing Master. He observed that according to Order 4 of the Remuneration Order the time limit for filing bill of costs is 60 days from the date of the decision awarding the costs. He said in the present case the decision was delivered in 06/05/2021 and the respondent filed his bill of costs on 23/08/2021 after the expiry of 90 days he said this was a clear violation of Order 4 of the Remuneration Order. Mr. Chitale pointed out that since the matter at the Tribunal was time barred the Taxing Master had no jurisdiction to deal with it. The matter ought to have been dismissed.

Mr. Chitale also said that the bill of costs was granted without hearing the applicant herein. He observed that he had raised an oral

preliminary objection on 11/01/2021 but the Chairperson granted the whole bill of costs without the applicant being afforded an opportunity to be heard. He prayed for the decision of the Taxing Master in Misc. Land Application No. 494 of 2021 where the applicant was ordered to pay all costs enshrined in the bill of costs be nullified/reversed.

On the part of the respondent, the submissions were filed by Ngallaba Attorneys Advocates. There was no specific name of the advocate who signed the said submissions on behalf of the respondent from the said Law Firm. Though it is not fatal, but it has been the practice and said time and again that, the respective advocate in a firm who is drawing documents on behalf of the client has to endorse his name and file documents in court for easy follow up and reference. That said, the said law firm on behalf of the respondent submitted that the applicant is fumbling by consolidating two applications in one. They said the applicant is challenging to be condemned unheard, and secondly he is challenging the dismissal order on the raised preliminary objection. They submitted as for the dismissal order the proposed course of action would have been an appeal and further that since the applicant did not object to the bill costs as filed it constituted to consent thereto. They went on to say that whoever

wants the court to believe his story relevant evidence has to be produced to justify the claim. They said in section 110(1) of the Evidence Act CAP 6 RE 2019 he alleges must prove.. With the explanation, they prayed for the application to be dismissed with costs.

I have gone through the affidavit, counter-affidavit, submissions by Counsel and the record of the Tribunal. The two main issues which require the consideration by this court is whether the matter before the Tribunal was time barred and whether the amount taxed was proper. I must state at the outset that when there is any complaint on how bill of costs has been taxed or otherwise handled, then the aggrieved party is at liberty to file an application for reference under the Remuneration Order. The question of appeal does not arise here as alleged by the respondent

It is on record that the decision subject of the bill of costs was delivered on 06/05/2021. The decision was collected on 28/07/2021 and this application was filed on 30/08/2021. According to Order 4 of the Remuneration Order, bill of costs is supposed to be filed within 60 days. Therefore, counting from from 28/07/2021 when the

decision was ready for collection up to 30/08/2021, the application was within the time prescribed by the law. I understand the concern of Mr. Chitale on the issue of filing the bill of costs automatically without seeking for leave. However, in view of the recent decisions of the Court of Appeal where a judgment is an essential element for pursuing a further action, limitation of time starts running from the date when a copy of the same was availed to the prospective applicant (see **Alex Senkoro & Others vs. Eliambuya Lyimo (as administrator of the Estate of Frederick Lyimo), Civil Appeal NO. 16 of 2017 (CAT-DSM)** (unreported)). Technically therefore, the respondent was still within time to file the said bill of costs and I hold as such.

The second issue is that the taxing of the bill of costs is tainted with illegalities. I have gone through the record. Indeed, the parties did not submit on the bill of costs, the learned advocates only submitted on the issue of limitation of time. I agree with Mr. Chitale that this was not proper because the Chairman was supposed to first clear the issue of time limitation and then order the parties to argue the substantive issues in the bill of costs since it was decided that the application was within time. The record is clear that no party

submitted anything on the bill presented while they were all represented by their advocates. Since the bill of costs was not argued at all the Chairperson's decision to grant the bill as presented raises eyebrows. Subsequently, the decision of the Taxing Master on the bill taxed is misconceived and it is hereby quashed and set aside.

The respondent in the submission allege that the applicant consented to the bill of costs, but the records do not support this allegation as it is clear that the Taxing Master did not give the parties opportunity to address him on the bill of costs as presented.

For the reasons stated above, this application is granted. The decision of the Tribunal is quashed and set aside; the file is returned to the Tribunal for hearing of the bill of costs on merit before another Chairman. Costs shall follow events.

It is so ordered.




V.L. MAKANI
JUDGE
25/07/2022