

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

REFERENCE NO.18 OF 2023

(Originating from Bill of Costs No. 175 of 2021)

KHATIBU DANGI.....APPLICANT

VERSUS

ALLY MASSOUD.....1ST RESPONDENT
MACHOWA MALISA.....2ND RESPONDENT
MBARAKA MIRAJI.....3RD RESPONDENT

EX-PARTE RULING

Date of Last Order: 31.07.2023

Date of Ruling: 11.07.2023a

T. N. MWENEGOHA, J.

The applicant brought the Application at hand challenging the award of costs given in favour of the respondents, vide Bill of Costs No. 175 of 2021. The respondent, on their part, raised two preliminary objections as follows; -

1. The application is time barred.
2. The application is incompetent.

The objections were disposed by way of written submissions. Advocate Shamimu Kikoti, appeared for the respondents, while the applicant failed to file his submission to reply that of the respondents, hence this Ruling.

Arguing on the 1st objection, the respondents' counsel maintained that, this Application was supposed to be filed on the 28th of February 2023, as ordered after a leave was granted. However, the applicant brought this matter contrary to the Court order, given while striking out a former case, vide Reference No. 03 of 2023, according to section 3 of the Law of Limitations Act, Cap 89, R. E. 2019. Hence the Court lacks jurisdiction to entertain the matter as decided in **Juma Mtungirehe versus The Board of Trustees of Tanganyika National Parks T/A Tanzania Parks, Civil Appeal No. 221/02 of 2020, Court of Appeal of Tanzania, at Arusha.**

When replying to the 1st limb, Advocate Regina Kiumba for the applicant, relied on **Order I Rule 10(2) of the Civil Procedure Code, Cap 33, R. E. 2019.** She insisted that, on the basis of that provision, the Court has discretionary powers to join a non-joined party(s). For this reason, this objection does not fit the test of being on pure point of law as such. Therefore, the two cases referred by the respondent's counsel are distinguishable in this case.

On the 2nd objection, it was argued that, the application is incompetent for being filed using a Notice of Application, made under **Order 7(1) and (2) of the Advocates Remuneration Order of 2015,** instead of a chamber summons, supported by an affidavit.

Having gone through the submissions by the counsel for the respondents, the issue for determination is whether the objections have merits or not. To do so, I had to go through the records at hand.

The records with regard to present case show that, the impugned decision of a Taxing Officer, Hon. Massawe, (Bill of Costs No. 175 of 2021), was delivered on 10/06/2022, (annexure KD 1). The applicant, applied for an extension of

time. The time was extended as prayed by Hon. Mgeyekwa J, vide Misc. Application No. 522 of 2022, dated 06/12/2022 (see annexure KD 2). The applicant was given up to the 28/02/2023, to have been filled his Application for Reference. He did that, vide Reference No. 03 of 2023. However, the same was struck out by Msafiri J, on the 24/05/2023. He was given a freedom to file a fresh Application, subject to limitation of time. He preferred this Application, but did not consider the issue of time, as advised by Hon. Msafiri J.

This is the basis of the respondents' objection, claiming that, he has already exceeded the time extended by Mgeyekwa, J. when they filed the Reference No. 03 of 2023. For filing the instant case, they ought to have applied for a leave to enlarge the time first, as directed by Hon. Msafiri, J. I subscribe to their arguments. The case at hand is time barred owing to the reasons and facts I have explained herein above. Therefore, the Court's hands are tied and cannot proceed with the matter which has been lodged out of the required time, see **Juma Mtungirehe versus The Board of Trustees of Tanganyika National Parks T/A Tanzania Parks, supra**. Therefore, the objection is found to have merits and it is hereby sustained.

As for the second objection, I see no need to discuss it, as the findings in the first objection have disposed the entire case.

In the event, the application is dismissed with costs.

Ordered accordingly.




T. N. MWENEGOHA
JUDGE
31/07/2023