

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

REFERENCE NO.16 OF 2023
(Originating from Bill of Costs No. 127 of 2022)

KCB BANK TANZANIA LIMITED.....APPLICANT

VERSUS

**MARIAM OMAR ZAHORO (Administratrix of the Estate of the late
OMAR ZAHORO).....RESPONDENT**

R U L I N G

Date of Last Order: 16.05.2022

Date of Ruling: 28/07/2023

T. N. MWENEGOHA, J.

The applicants brought the Application at hand challenging the award of costs given in favour of the respondent, vide Bill of Costs No. 127 of 2022. The respondent, being against the Application, raised two preliminary objection as follows:-

- 1. The Application is incompetent for omitting other parties present in the Bill of Costs No. 127 of 2022**
- 2. The Application is incompetent for not being accompanied by the impugned Ruling.**

The objections were disposed by way of written submissions. Advocate Frank A. Chundu, appeared for the respondent, while the applicant was represented by Advocate Regina A. Kiumba.

Arguing on the 1st objection, Mr. Chundu contended that, the impugned Ruling of the Taxing Officer involved six parties, but the applicant has chosen to

bring the instant Application to challenge the decision of a Taxing Officer against only one person, the respondent here in. This is against the settled rules as given in **TPB Bank PLC (Successor in Title of Tanzania Postal Bank) versus Rehema Alantunyamadza & 2 Others, Civil Appeal No. 155 of 2017, Court of Appeal of Tanzania, at Dar es salaam (unreported)**. He insisted that, it is a must to include all the parties in the subsequent proceedings because the outcomes of the present Application will affect all of them, as stated in **Isaack Wilfred Kasanga versus Standard Bank Tanzania Limited, Civil Application No. 453.01 of 2019, Court of Appeal of Tanzania, at Dar es salaam(unreported)**.

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 my part, what I see, especially from the applicant's counsel is a misinterpretation of the rules for joinder or non-joinder of parties, in relation to the Application at hand. At this stage, we are concerned with the records, as the issue of parties. It has been sealed in at the trial stage, before the Taxing Officer. Her omission in the process of challenging the impugned decision is what brought it out. What the counsel for the applicant did is not permitted in any way. It is as good as starting a case afresh, while the decision and orders to be given by the higher court, has to affect all parties involved in the case from the trial stage. That is the reason behind this objection to be

fitting in the rules guiding preliminary objections see **TPB Bank PLC and Isaack Wilfred Kasanga, (supra)**.

Therefore, and for the reasons I have wondered to give above, I find merits in the 1st objection. The same is sustained accordingly. Owing to this fact, I do not need to discuss the 2nd objection as the findings in the 1st objection has finalised the matter.

In the end, the case is struck out with costs.

Ordered accordingly.


T. N. MWENEGOHA
JUDGE
28/07/2023

