

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

REFERENCE NO. 12 OF 2023

(Arising from the Ruling in Bill of Costs No.218 of 2022, Hon. Kisongo DR)

AND

MISC. LAND APPLICATION NO. 262 OF 2023

(Arising from the Ruling in Bill of Costs No.244 of 2022, Hon. Kisongo DR)

WILLA ISHENGOMA 1ST APPLICANT

ALBERT ISHENGOMA 2ND APPLICANT

WILMOT ISHENGOMA 3RD APPLICANT

VERSUS

MAHENDA NYALIKA 1ST RESPONDENT

FAUSTINE KAZINZA 2ND RESPONDENT

CONSOLIDATED RULING

06th July 2023 & 22nd August 2023

L. HEMED, J.

On 26th June, 2023, when the matter in Misc. Land Application No. 262 of 2023 was called for ruling of the preliminary objection, I noted that both, Reference No. 12 of 2023 and Misc. Land Application

No. 262 of 2023 refer to the same parties, similar prayers and the decisions of both applications were delivered by Hon. Kisongo, DR. After having observed such similarities, I directed the application to be consolidated to meet the ends of justice.

In both applications, the applicants are seeking for the orders among others, that, this court should apply its mind to interpret the point of law and issues of facts from the decision of the Taxing Officer. Hearing of the application proceeded by way of written submissions, whereby, **Mr. Charles Tumaini**, learned advocate represented the applicants, while the respondents enjoyed the service of **Ms. Batilda Mally**, learned advocate.

In the course of composing this ruling, I noticed that the applicants did not attach the impugned rulings to Reference No. 12 of 2023 and Misc. Land Application No. 262 of 2023. This made it difficult for the court to ascertain the merits of the complaints of the applicants in both applications. I also realized that the respondents alerted the court about such anomaly in their reply submission.

It was argued by the counsel for the respondents that failure to attach the impugned ruling is fatal and renders for dismissal of the application for reference. In support of her argument, she referred to

the cases of **Mraga Mkama Seleman vs Peter Magesa**, Civil Reference No. 10 of 2022, **Manager Tanroads Kagera vs Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, (CAT), and **Bruno Wenceslaus Nyalifa vs Permanent Secretary, Ministry of Home Affairs**, Civil Appeal No. 82 of 2017, (CAT) and prayed for the matters to be dismissed with costs.

The reply to the point of failure to attach the impugned ruling featured in the rejoinder submissions of the applicants. It was contended that the respondents' counter affidavit and the preliminary objection against the application, imply that, the respondents are aware of the existence of the impugned decisions of the taxing master. He also invited the court to invoke the principle of overriding objectives by doing away with technicalities. To support his contention, he referred to the case of **Boniface Mathew Malyango and Another vs R**, Criminal Appeal No. 358 of 2018 (CAT).

Having gone through the rival submissions made by the parties, the duty of the court is to determine the central question as to whether the applications have merits. It should be noted that the applicants in this matter had invited this court to '**apply its mind to interpret the point of law and issues of facts from the decisions of the Taxing**

Officer' in Reference No.12 of 2023 and Misc. Land Case Application No.262 of 2023. When the court attempted to 'apply its mind to make interpretation of the factual and legal issues in the impugned decision" it could not be able to trace the said decisions. There was no decisions being attached to the applications for purposes of assessment, digest, and scrutiny by the court. The question that arises is whether failure to attach the impugned decision is fatal.

I am mindful that under Order 7 of the Advocates Remuneration Order, GN No. 263 of 2015, it is not couched to require attachment of the ruling of the Taxing Master to the application for reference. However, in my firm view, attachment of the impugned decisions to applications for reference is impliedly important, mandatory and crucial to enable the court to make reference thereto.

The fact that parties are at issue with the decision of the taxing master in Bill of Costs No. 218 of 2022 and Bill of Costs No. 244 of 2022, annexing copies of both decisions was key so as to enable the court, **first**, to be sure of the existence of such decision. The **second** reason was to enable the court to scrutinize them based on the prayers of the applicants.

The importance of attaching impugned decisions of the taxing

master to application for reference was discussed in the case of **Mraga Mkama Selemani vs Peter Magesa**, Civil Reference No. 10 of 2022, where this court sitting at Musoma, had this to say at page 4: -

*" it is not a rule of law to attach a ruling of the Taxing Master to the application for reference, **but it is currently an established and accepted as part of the procedure in the proper administration of justice that an attachment of rulings and judgments in applications and appeals in this country. The rule is designed to ensure that the applicant and/ or appellant has a fair hearing.**" (Emphasis added)*

I do subscribe to the position taken by this court in the above-cited decision. I insist that attachment of the impugned rulings in the application is very important for proper administration of justice. In fact it is the duty of the applicant to ensure that the impugned ruling is attached to the application. Failure to discharge that duty is as good as failure to properly prosecute the application. I have taken this position because if the impugned ruling is not attached to the application, it impedes the court from making proper scrutiny of it.

In view of what I have demonstrated, I find that the applicants have failed to move the court to apply its mind to interpret the points of law and issues of facts from the decision of the Taxing Master in Bill of Costs No. 218 of 2022 and Bill of Costs No. 244 of 2022. Consequently, Reference No. 12 of 2023 and Misc. Land Application No. 262 of 2023 fail and are hereby dismissed. Each party has to bear its own costs. Order accordingly.

DATED at **DAR ES SALAAM** this 22nd August 2023.

