

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

**LAND REFERENCE NO. 16 OF 2020**

*(Arising from Bill of Cost No. 111 of 2019)*

**NATIONAL BANK OF COMMERCE LIMITED ..... APPLICANT**

**VERSIS**

**AMIE SADICK SANGA ..... RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

The application beforehand was lodged under the provisions of Order 7(1) & (2) of the Advocates Remuneration Order, G.N. No. 264/2015 ("The Order"). The applicant was aggrieved by the decision of the Taxing Master in Bill of Costs No. 111/2019 dated 01/09/2020 and in her Chamber Summons, she prayed for the following orders:

1. The Honourable Court be pleased to set aside or quash the ruling of the Taxing Master styled as Bill of Costs No. 111 of 2020.
2. Any other or further orders as it are just and convenient in the circumstances of the case.
3. Costs be provided for.

The applicant's grounds of reference were that:

- (i) The Hon. Taxing Officer disallowed the sum of TZ. 31,852,000.00 out of the claimed amount of TZS.

51,476,500.00 which is excessive of on sixth (1/6) of the total bill amount claimed, exclusive of court fees, but nevertheless awarded the Respondent the sum of TZS. 20,424,000.00 out of the Bill of Costs.

- (ii) The Hon. Taxing Officer never addressed important ground raised by the Applicant's Written submission, in that there is an appeal which is still pending in the Court of Appeal of Tanzania, whereby the Applicant had filed a notice of intention to appeal against the whole decision of the High Court in Land case No. 150 of 2015 on 14<sup>th</sup> June, 2019.
- (iii) The Hon. Taxing Officer never addressed important ground raised by the Applicant's Written Submission, in that the Decree Holder (Respondent herein) did not produce EFD receipt, and thus denying the Applicant the right to be heard;
- (iv) There was no justification for awarding TZS, 16,000,000 as instruction fee;
- (v) That there was no justification for awarding TZS. 1,950,000 as costs incurred for attendance
- (vi) That there was no justification for awarding TZS 200,000 as costs incurred for attendance in respect of items 8,12,23,24, 40 and 45 of the bill of costs.

Determination of this application will begin with the second ground of reference where the applicant alleged that the Hon Taxing Master never addressed important ground raised in the Applicant's Written Submissions to the effect that there is an appeal which is still pending in the Court of

Appeal of Tanzania whereby the applicant had filed notice of intention to appeal against the whole decision of the High Court in Land Case No. 150 of 2015 on 14/06/2019. He was challenging the jurisdiction of the Taxing Master in determining the Bill of Costs while there was the alleged pending appeal. This ground necessitated me to revisit the ruling of the Taxing Master and indeed on the 5<sup>th</sup> page of the ruling, the court elaborated that the legality of the Bill was questioned due to pendency of an appeal before the Court of Appeal. The applicant further challenged the legality of the application on the ground that the bill of costs was not a part of the exception of applications that could proceed despite the notice of appeal having been filed. By citing the cases of **Mohamed Enterprises Tanzania Limited Vs. The Chief Harbor Master and the Tanzania Ports Authority, Civil Appeal No. 24/2015**(unreported) and **Matsushita Electric Company Limited Vs. Charles George t/a CG Travers, Civil Application No. 71/2001** (unreported) , the applicant raised argument that by institution of the notice of appeal, the High Court was deprived of its powers to entertain the proceedings giving rise to the notice of appeal. As per the records, having reproduced the arguments of the parties, indeed the Taxing Master did not address this point at all. Instead he continued to determine the merits of the appeal. At this point it my duty to assess the omission by the Taxing Master to address the issue as the issue goes to root of whether or not the Taxing Master had jurisdiction to entertain the application before it.

Indeed as pointed out by Mr. Swalle, learned Counsel representing the respondent, Mr. Laswai did not make substantive submissions on this point.

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However, I have considered the fact that the submissions were already made in the Bill of Costs that is a subject to this reference application, it is therefore sufficient to determine the ground as it is.

In his reply submissions, Mr. Swalle argued that apart from the fact that the Applicant has neither argued nor abandoned this point, he has also failed to give out the details of the alleged pending appeal such as case number or the status quo of the case. Assuming that this point was argued to the effect that such appeal bars the Taxing Master's jurisdiction in assessing the bill presented, his submission was that the same is a fallacy and total misconception of the law. That the law is very clear under the provisions of Rule 11(3) of the Court of Appeal Rules, GN No. 344 of 2019:

*"In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order."*

He then argued that in as far as there is no stay of execution filed by the Applicant, the Taxing Master had jurisdiction to entertain the bill of costs as tabled by the Respondent. He supported his argument by citing the case of **Jawinga Co. Ltd v. Aristepro Investment Co. Ltd, Commercial case No. 103 of 2012**, where Mruma J, at pg. 4 of the ruling stated as follows;

*"Clearly, from the above quoted provision of law, the pendency of the notice of appeal or of an appeal does not constitute the stay of*

*execution of a decree in the trial court. Under the same rule, is Rule 11 (2) (b) of the Court of Appeal Rules, the Court (which means the Court of Appeal) may, upon good cause shown order stay of execution of the decree or order. It is only where there is order for stay of execution that the trial Court is estopped from issuing an execution order"*

He concluded that this being the case, the Taxing Master was not in anyhow bared from entertaining the bill of cost application tabled before him. The applicant did not make any rejoinder submissions.

I have gone through the records of this reference and indeed as established by the applicant on the second ground of appeal, the appellant did raise the issue of having lodged a notice of appeal to the court of appeal. There were submissions made then on the jurisdiction of the court in determining the Bill of Costs tabled before it and on page 5 of his ruling, the Taxing Master reproduced those submissions of the parties. However, in the whole of the ruling, the Taxing Master did not come back to address the issue before proceeding to determine the substance of the application. He totally ignored the issue which was very crucial as it touched his jurisdiction to determine the matter. So; what is the result of such a fatal omission to determine his jurisdiction?

The applicant having raised the issue of jurisdiction of the Taxing Master, and the Taxing Master having omitted to address the issue totally condemned the applicant unheard on that matter. Further to that, the Taxing Master was duty bound to address the issue and satisfy himself that he had jurisdiction to proceed and determine the Bill of Cost. For that

reason, I find the omission to address the issue of jurisdiction as a fatal irregularity which vitiates the validity of the resulting ruling of the Taxing Master.

On those findings, I find the second ground of reference to be sufficient to dispose this application. Since it is on record that a notice of appeal which initiates the appeal to the Court of Appeal was lodged before the Bill of Costs No. 111/2019 was instituted, and that fact having been tabled before the Taxing Master for determination which was not determined, the ruling of the taxing master was fatally defective as it condemned the applicant unheard. It is hereby set aside.

Consequently, the Bill of Costs No. 111/2019 is remitted back to the Taxing Master so that he can address himself whether or not he had jurisdiction to entertain the application owing to the filed notice of appeal to the Court of Appeal. Thereafter, if and only if he determines that he has jurisdiction to proceed with the Bill of Costs, he may proceed to determine the merits of the application before him. This application is therefore allowed to the extent explained. From the circumstances of what has been decided, I make no order as to costs.

Dated at Dar-es-salaam this 22<sup>nd</sup> day of July, 2021.



**S.M. MAGHIMBI.**  
**JUDGE.**

