

IN THE HIGH COURT OF TANZANIA

AT Mwanza

(HC) CIVIL CASE NO. 11 OF 1988

1. KIRIMA MASSE			
2. JOSEPH C. KERAKA			
3. SIMON WARUBA			
4. MWITA RUBIRYA			
5. MWITA MAKORI		DEGREE HOLDER
6. KICHERE MATIKO			
7. MWIKWABE NYARURYA			
8. JOHN CHACHA			

Versus

MARWA S/O NGECA	JUDGMENT HOLDER
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RULING

RUGAIMUKAMU - DR (TAXING MASTER)

This is an application for Bill of Costs, arising from HC Civil Case No. 11/88 and Court Appeal Civil Case No. 31/91.

There are 27 items to be taxed contained into two applications. The total amount to be taxed amounts to shs. 953,400/=. The costs were incurred while the applicants defended their case in both the High Court and Court Appeal. The costs are said to be for accommodation; fare; food; and attending the Court at various days.

At the hearing of this application, the applicants were represented by the 2nd and 3rd decree holders. They adopted the contents of their application. They, however, submitted that after they had filed the Bill of Costs Application, they continued to incur expenses through attending the Court to prosecute their Bill of Costs application.

The application has not been supported by any voucher or receipt for the claimed expenses or costs. At the hearing of the application the applicant attempted to tender payment vouchers from their village Government which indicated that the applicants were advanced some money for transport, food, and accommodation; but there was ^{no} evidence of how and whether the same money was really

spent for the same purpose. The documents were thus rejected.

Rule 57 of GN 515 of 1991 ~~empowers~~ a Taxing Officer to allow reasonable expenses incurred by the parties or their witnesses. In this application, I have no doubt that the applicants did incur expenses while they defended their case in both the High Court and Court Appeal; but in the absence of receipts, how do I satisfy myself that the claimed amount was really spent as indicated in the application and therefore a refund is necessary?

In the absence of receipts, and by virtue of the powers conferred upon me by Rule 51 hereinabove mentioned, I will allow only 50% of the amount claimed in all 27 items. That being the position, the Bill of Costs is taxed at shs. 416,700/= which is allowed, while shs. 476,700/= are disallowed and taxed off.

However, in the judgment of the Court/^{of} Appeal, the Court Ordered that "the appellant (the respondent in this application) shall pay to the respondents (the applicants in this application) only 75% of the Costs. By computation, 75% of the amount hereinbefore allowed as Costs, brings the results to shs. 357,325/=. The same Court of Appeal Judgment made an order that the respondent (in this application) was to be refunded shs. 60,000/= by the applicant (in this application). At the hearing of this application, the respondent raised the same point; and since there was no objection from the applicants in respect of the same amount, the same shall be reduced from the amount already allowed as costs.

In the final results, shs. 297,325/= are allowed.

The parties are posted to Rule 5 of GN 515 of 1991, to make a reference to the Hon. Judge within 21 days, in case either party is

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is not satisfied with the outcome of this application.

AT MWANZA

6th September, 1994


P. R. K. RUGALIMUKAMU

DISTRICT REGISTRAR

(TAKING MASTER)