

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA DISTRICT REGISTRY]

AT ARUSHA

CIVIL REFERENCE No. 05 OF 2022

(Originating from miscellaneous application No. 20/2021 of Mbulu District Land and Housing Tribunal at Dongobesh, original Application No. 48 of 2018 at Mbulu DLHT Dongobesh)

CHRISTINA AWE.....APPLICANT

VERSUS

HOTAY MEHHI.....1ST RESPONDENT

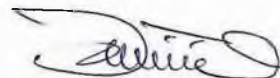
DAHASHA GEGE.....2ND RESPONDENT

RULING

12th October & 28th October 2022.

TIGANGA, J.

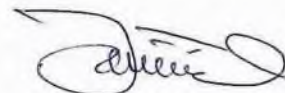
In this application, the applicant herein applied before this court to call and examine by reference the decision of the Taxing Master dated 10th February 2022 in Miscellaneous Application No. 20 of 2021 a taxation cause before the District Land and Housing Tribunal for Mbulu District at Dongobesh. The applicant prays also for costs to be due in course and other reliefs which this court deems fit to grant. The applicant moved this Court by way of chamber summons with an affidavit sworn by one Christina Awe, the applicant, in



which the grounds for the application were stated. The court was moved under Order 7(1) and (2) of the Advocates Remunerations Order, GN No. 263 of 2015.

The application was opposed by the respondents by filing the joint counter affidavit sworn by both respondents in which they put forth the ground for opposition. With leave of the court and consent of the parties, the application was argued by way of written submissions. In support of the application, Ms. Natujwa Bakari learned counsel for the applicant submitted that, in Taxation Cause No. 20 of 2022 filed before the District Land and Housing Tribunal of Mbulu at Dongobesh, the applicant applied for the costs of Tshs. 7,554,000/= . After hearing of the taxation cause, the applicant was awarded a total of Tshs. 7, 424, 000/= based on the reason which was given by the taxing master in the impugned ruling.

She further submitted that, the decision of the taxing master is unfounded and premature for granting costs of the case because the decision upon which this bill of costs emanates has been appealed against in Land Appeal No. 46 of 2021 before the High Court, which was transferred to Hon. Chitanda SRM with extended jurisdiction. Therefore, the case is still in contest not yet to be determined at the level of appeal. She said that, fact



was communicated to the Taxing officer but unfortunately he ignored it. In the counsel's view, after being put to light, the taxing officer was supposed to stay the proceedings to allow the appeal to be determined. She referred this court to the case of **Arcado Ntagazwa vs Buyogera Julius Bumongo**, [1997] TLR 242 in which the court held that, where there is a notice of appeal to the Court of Appeal, all proceedings in the subordinate court should be stayed. She also cited the case of **Dominic Ishengoma vs Managing Director Geita Gold Mining**, Civil Reference No. 11 of 2020 HC, Mwanza.

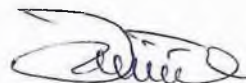
The counsel further submitted that, the Chairman was also not justified to grant such costs in accordance with item 2 to item 131, he continued arguing that, there were dates which were found in the bill of costs but those dates do not correspond the dates of the case. He also said there is no concrete proof of the transport and food costs incurred by the respondents and their Advocate, since the receipts issued had their numbers in sequence while the services were of different months and years. In his view, in the entire ruling, the Taxing Master had never stated on how the items have been proved, hence the ruling is a guessed one. Her arguments is based on the fact that the claim was not supported by evidence or receipt as required

by the law the case of **M.W Nyakangai vs Attorney General**, Civil Application No. 12 of 1996, Court of Appeal of Tanzania, DSM.

She also reminded the court that, it was the duty of the Taxing officer to satisfy himself that, the claimed costs were actually incurred and that it was necessary was held in the case of **Alfayo Tingisha vs Simon Laanyuni**, Misc. Civil Application No. 47 of 1998, HC Arusha. In the end, she prayed the application to be granted with costs.

In reply submissions, Mr. Abdallah Kilobwa, Advocate for the respondents, he submitted that, it was not the Chairman's fault to deal with the taxation cause since the applicant did not inform the Tribunal of the presence of the Land Appeal No. 46 of 2021 before the High court. The respondents further submitted that, it is not true as stated by the applicant that, the Taxing master awarded the respondents Tshs. 7,424,000/= since it is clearly indicated at page 6 of the trial tribunal's ruling that, the respondents were awarded 2,424,000/=. Hence the applicant's allegation in this aspect is unfound.

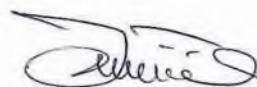
Furthermore, the respondents continued arguing that, the costs granted are justifiable since the respondents and their Advocates have been



attending to the tribunal at Dongobesh where the tribunal is situated. It should also be noted that, the respondents' Advocate stay at Babati town which is 160 kilometers distance between Babati and Dongobesh and the respondents' Advocate, had to attend on every day fixed for the matter, which is to go and from trip in every attendance to the Court. They also submitted that, on the part of the respondents, it is clear that, the respondents also stay far from where the tribunal is located. To substantiate, his allegations, he said, one stays at Mang'ola village in Karatu District while the other stays at Gehandu village in Mbulu District.

He further submitted that, Tshs. 50,000/= as the costs incurred per day was just and reasonable basing on the adduced factors. The respondents summed up their reply submissions with the view that, since the respondents enjoyed the service of the Advocate. It goes without saying that, the taxing master of the trial tribunal is justified to have awarded the costs, hence the court has to dismiss this application with costs. There were no rejoinder submissions filed, hence the reply submissions marked the end of Parties' submissions.

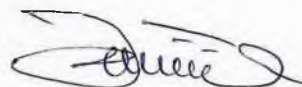
From the submissions by the parties, one very pertinent question has been raised by the counsel for the applicant and has not been disputed by the



counsel for the respondent, that the decision which awarded costs, has been appealed against before the High Court and that the appeal was transferred to the Court of Resident Magistrate with Extended Jurisdiction, Chitanda, SRM (Extended Jurisdiction). Basing on that undisputed fact, the applicant counsel argues that the presence of appeal, takes away the jurisdiction of the trial tribunal to determine taxation cause in respect of the proceedings which have been appealed against. Now, the issue is whether, this argument is viable

Submitting on the viability of the arguments, the counsel for the applicant cited the cases of **Arcado Ntagazwa vs Buyogera Julius Bumongo, (supra)** and **Dominic Ishengoma vs Managing Director Geita Gold Mining, (supra)** in which the court held that, where there is a notice of appeal to the Court of Appeal, all proceedings in the Subordinate Court should be stayed. This position was made very clear in the case of **Matsushita Electric Co. Ltd vs Charhes George Trading as C.G Travers, Civil Application No. 71 of 2001 (unreported)** where the Court of Appeal held inter alia that,

"Once a Notice of Appeal is filed under rule 76 Now Rule 83 of the Rules then this Court is seized of the matter in

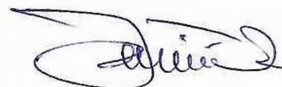


*exclusion of the High Court except for applications specifically provided for, such as **leave to appeal**, or **provision of a certificate of law or execution where there is no stay of execution from the court.**"*

As it can be ascertained in the authority herein above, it is glaringly clear that, the application for Bill of cost or taxation proceedings is not among the matters specifically provided for under the above authority. Therefore, the trial tribunal proceeded without jurisdiction.

This also has been the position in the case of the **Attorney General of the Republic of Uganda versus the East African Law Society & Another**, EACA Application No. 1 of 2013 in which it was held that;

*"Reading advocate Julius's submissions, I found the gist of his submissions is the fact that the Decree Holder has the right to enjoy his costs awarded in Land Case No. 1 of 2015 by this court. It is well known that taxation cause must be filed within 60 days from the date of the order as per Order 4 of the Advocate Remuneration Order, G.N. No. 264 of 2015. On that basis, the Decree Holder was required to file his bill of costs within the said 60 days, the prescribed period. **Nevertheless, based on the Court of Appeal decisions by Advocate Frank, one must not dispute the truth that this court's jurisdiction ceases***



instantly after the Notice of Appeal to the Court of Appeal has been filed in the Court of Appeal sub-registry."

In line with the above position, I subscribe to the applicant's view that, the tribunal proceeded without requisite jurisdiction due to the pending appeal against the trial tribunal's decision. The fact that the applicant did not inform the tribunal of the presence of an appeal is in my view, immaterial and can not be a base of flouting the procedure by the tribunal proceedings without jurisdiction.

That being the case, since the tribunal proceeded without jurisdiction, I find it not viable to determine the merit of this reference. I therefore quash and set aside the decision in taxation cause number 20 of 2021. Fro the reasons given. the taxation has to wait for the determination of appeal before the RMS Court with Extended Jurisdiction.

It is accordingly ordered.

DATED at **ARUSHA** on the 28th October 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga".

J.C. TIGANGA,

JUDGE.