

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: MUNUO, J.A., KILEO, J. A., And MANDIA, J. A.)

CIVIL APPEAL NO. 25 OF 2010

M/S SOPA MANAGEMENT LIMITED.....APPELLANT

AND

M/S TANZANIA REVENUE AUTHORITY.....RESPONDENT

**(Appeal from the decision and order of the High Court of Tanzania at Arusha)
(Chocha, J.)**

Dated the 30th day of August 2007

in

Civil Reference No 9 of 2006

JUDGMENT OF KILEO, J. A.

(Under Rule 39 (3) of the Court of Appeal Rules, 2009)

29th February & 05th March, 2012

KILEO, J. A.

On 10th June 2004 the Tanzania Revenue Authority who is the present respondent, filed a Bill of Costs (Taxation Cause No. 13 of 2004) in the High Court pursuant to Civil Cause No. 22 of 1998 of the High Court of Tanzania, Arusha Registry. The Bill was filed three years and nine months from the date costs were awarded. A preliminary objection was raised against the lodgment of the Bill on the ground that it was time barred. The Taxing Master upheld the preliminary objection and dismissed it under

section 3 (1) of the Law of Limitation Act. On a Reference to a judge, the Taxing Master's decision was reversed. In his ruling the judge stated:

"Taxation of costs is only a step towards enforcement of the entire judgment. It is dependent on the orders flowing from the judgment. It cannot stand independently. Upon finding that taxation complements the judgment and or decree, Art. 20 of the 1st Schedule, Part III of the Law of Limitation Act is of proper application for the purposes of computing limitation within which to process the bill of costs. The time provided for under this article is 12 years."

Following the finding above an order was made for the hearing of the 'application' on merit. Being dissatisfied with this decision, the appellant, having obtained the requisite leave has come to this Court.

The appellant who is represented by Mr. Maro, learned advocate has filed the following two grounds of appeal:

- 1. That the High Court erred in law in treating as and holding that a Bill of Costs constitutes an application for execution.*
- 2. That the High Court erred in law in holding that, Taxation Cause No. 13 of 2004 was not time barred.*

The respondent is represented by Dr. Angelo Mapunda, learned advocate.

The bone of contention in this appeal centers on the question whether a Bill of Costs filed in the High Court falls under item 20 or item 21 of Part III of the Schedule to the Law of Limitation Act. Supplementary to this

question is whether a Bill of costs can be said to be an application so as to make it fall under item 21 mentioned above in view of the fact that the Advocates Act under which the Bill was filed does not provide for the period within which it has to be filed.

Mr. Maro argued that the High Court judge erred to treat a Bill of Costs as an application for enforcement of the decision of the High Court. He took us through a number of writings and decisions in support of his argument to which we will make reference as we may find relevant in the discourse of this matter.

Submitting before the Court, Dr. Mapunda pointed out that there are conflicting decisions in the High Court with regard to the time limit within which a Bill of Costs must be filed and he called upon us to resolve the conflict. The learned counsel agreed that a Bill of Costs is not an application for enforcement of a court's decree, judgment or order. He also very kindly brought to the attention of the Court a decision of the Court by a single judge who held that a Bill of Costs had to be filed within sixty days of the date of the order for costs. The decision- **Ebeneza Massawe vs. Permanent Secretary, Ministry of Work and Another** (Civil Application No 86 of 2006- unreported) concerned a Bill of Costs in the Court of Appeal.

Dr. Mapunda also kindly brought to Court's attention the provisions of item 2 (2) of the Third Schedule to the Court of Appeal Rules which enjoins a party to file a Bill of Costs as soon practicable from the date of making the costs or within 21 days after a request in writing by the party liable.

Despite his observations the learned counsel wondered however why execution of courts' decisions should have a shelf life of 12 years and the application for determination of a Bill of Costs only sixty days. He asked the Court for guidelines.

Item 20 of Part III of the Schedule to the Law of limitation Act provides:

"20. To enforce a judgment, decree or order of any court where the period of limitation is not provided for in this Act or any other written lawtwelve years"

And item 21 provides

"21. Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written lawsixty days"

It is clear that item 20 provides for the time within which a decision of the Court has to be enforced. The question that must be answered is whether the determination of a Bill of costs can be said to fall under an application for enforcement of a court's decision.

The term 'enforce' in Black's Law Dictionary is defined as:

'To put into execution; to cause to take effect; to make effective, as, as to enforce a particular law, a writ, a judgment, or the collection of a debt or fine, to compel obedience to'

I do not think that a Bill of Costs falls under enforcement. Enforcement, in my view necessarily connotes that something has come to a finale. Enforcement stipulated under item 20 would involve applications for garnishee orders, attachment of immovable or movable property, arrest and detention in civil prison etc. On the other hand, when a Bill of Costs is filed in court hearing of the parties takes place and a finding is made. That finding can be complained against to a higher tribunal. In **Kalunga and Company Advocates vs. National Bank of Commerce**- Civil Application No 113 of 2003 (unreported) a single judge of this Court considered a Bill of Costs filed in the High Court to be an 'inquiry'. He found that an appeal against the decision of that inquiry required leave in terms of section 5 (1) of the Appellate Jurisdiction Act. Going by the definition of 'application' given in the Law of Limitation Act I would agree with Mr. Maro that it is wide enough to include the filing of a Bill of Costs. 'Application' is defined as:

"application" means an application made to a court, which is of, or in relation to any proceeding of, a civil nature;"

A Bill of Costs is no doubt a proceeding of a civil nature. It involves, as I have herein before stated, the hearing of parties and a determination on the hearing. I am of the settled mind that a Bill of Costs does not fall under an application for enforcement of a court's decision.

Though the matter in issue in the **Ebeneza** case *supra*, was a Bill of Costs in the Court of Appeal, which set a time limit within which it had to be filed,

by inference there also must be a time limit within which a Bill of Costs in the High Court has to be filed.

B. B. Mitra - **The Limitation Act 1963**, twentieth Edition explains that laws of limitation are founded on public policy. He cites **Halsbury' Laws of England** where the policy of Limitation Act is laid down as follows:

'The Courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (i) that long dormant claims have more cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence' (**Halsbury's Laws of England, 4th Ed. Vol.28 p.266,para 605**)

Mitra also cites Andrew McGee in **Limitation Periods (2nd Edition 1994)** wherein he states:

"Arguments with regards to the policy underlying statutes of limitation fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as 'statutes of peace'. The second looks at the matter from a more objective point of view. It suggests that a time limit is necessary because with the lapse of time, proof of a claim becomes more difficult, documentary evidence is likely to have been destroyed and memories of witnesses

will fade. The third relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them. All these justifications have been considered by the courts."

These are no doubt good principles from which we can draw inspiration.

Mitra made the following observation to which I subscribe:-

"An unlimited and perpetual threat of litigation creates insecurity and uncertainty; some kind of limitation is essential for public order."

As of now, as already stated above, with the 2009 Court of Appeal Rules, a party is required to file a Bill of costs as soon as practicable. The relevant provision which is item 2 (2) of the Third Schedule to the Tanzania Court of Appeal Rules states:

" A bill of costs shall be lodged as soon as practicable after the making of the order for costs or not later than twenty-one days after a request in writing therefore by the party liable, or such further time as the Registrar may allow."

I take inspiration from this provision to underscore my view that a Bill of Costs filed under the Advocates Act in the High Court is an application falling under item 21 of Part III of the Schedule to the Law of Limitation

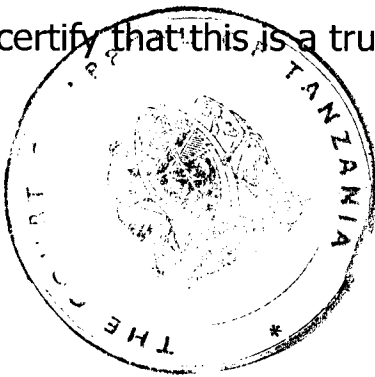
Act. Its shelf life cannot therefore be the same as an application for enforcement of a court's decision. In the circumstances it ought to have been filed within sixty days of the date that the order for costs was made. As it is, it was filed over three years later. The learned Taxing Master was therefore justified to dismiss it as it was barred by period of limitation.

Consequently, I would allow the appeal with costs. I would quash and set aside the decision of the High Court sitting on reference and I would restore the decision of the Taxing Master.

DATED at **ARUSHA** this 5th day of March 2012

E. A. KILEO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



E. Y. Mkwizu
E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL