

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**REFERENCE NO. 04 OF 2021**

**BETWEEN**

**ROCKETI MAHEGA.....APPLICANT**

***VERSUS***

**MSAFIRI MUSIGITANI.....1<sup>ST</sup> RESPONDENT**

**EMMANUEL MAGESA.....2<sup>ND</sup> RESPONDENT**

**MWAJUMA MAGANYA.....3<sup>RD</sup> RESPONDENT**

**NYABANANE MWIKWABE.....4<sup>TH</sup> RESPONDENT**

**RULING**

*28<sup>th</sup> March & 5<sup>th</sup> May, 2022.*

**A. A. MBAGWA, J.**

This is a reference from the decision of District Land and Housing Tribunal for Mara (DLHT) in the Bill of Costs No. 269 of 2021. The reference has been brought under Rule 7(1) & (2) of the Advocates Remuneration Order, GN No. 263 of 2015. In addition, the reference is supported by the applicant's affidavit.

The respondents won a case against the applicant in Land Application No. 325 of 2020 in which they were awarded costs. Consequently, they filed an application for Bill of costs No. 269 of 2021. Upon hearing of the matter, the

Hon. Chairman taxed the bill of costs at Tanzanian shillings three million five hundred fifty four thousand (3,554,000/=).

The applicant was aggrieved by the decision of the District Land and Housing Tribunal (Hon. Kitungulu Chairman) who awarded the respondents costs of the case to a tune of Tanzanian shillings three million five hundred fifty four thousand (3,554,000/=) hence preferred this reference. In his affidavit, the applicant simply states that the said amount was awarded without proof.

In contrast, the respondents opposed the reference through their joint counter affidavit. In essence, the respondents state that the said amount was awarded after the taxing master was satisfied with evidence presented.

When the matter came for hearing, the applicant was represented by Thomas Makongo, learned counsel whereas the respondents enjoyed the service of John Manyama, learned advocate.

In support of the reference, Mr. Makongo adopted the contents of the applicant's affidavit. He submitted that applicant's main concern was anchored on paragraph 3 of the affidavit which challenges the award of Tshs 3,554,000/=. Mr. Makongo contended that the award was granted without

any proof as it was clearly stated in the award at page 1. He therefore prayed the court to allow the reference.

In reply, Mr. Manyama started by faulting the citation of law. He submitted that the proper citation of the enabling law is GN. No. 263 of 2015 dated 17/07/2015 and not GN. 264 of 2015 as cited by the applicant. He thus prayed the Court to dismiss the application due to wrong citation.

With regard to paragraph 3 of the applicant's affidavit, the respondents' counsel submitted that the amount indicated i.e. 3,548,000 is not correct. He said that what was taxed in Application No. 269 of 2020 is 3, 554,000/=. He finally prayed for dismissal of reference.

In rejoinder, Mr. Makongo insisted that the application is properly before the court and the citation is GN. 264 published on 17<sup>th</sup> July, 2015. With regard to the variation in the amount indicated in the applicant's affidavit and the correct amount taxed, he left it to the court to decide.

I have paid a deserving attention to the rival submissions and I had an occasion to peruse the documents filed.

To begin with citation of law, my quick research has revealed that the proper citation is GOVERNMENT NOTICE NO. 263 published on 17/07/2015. I

therefore I agree with Mr. John Manyama on the correct citation of law. However, this issue should not detain me any more for it is now a settled position of law that wrong citation is not fatal as it is curable under the overriding objective principle.

With regard the main complaints of the applicant, I have gone through the record but I could not find any substance in his complaints. The applicant simply stated that there is no proof of the awarded amount whereas the taxing master was satisfied with the evidence presented before him. The applicant could not explain which particular item he was disputing and on what basis.

In the circumstances, I find no basis to disturb the decision of the taxing master.

In the event, I dismiss this reference with costs.

It is so ordered

Right of appeal is explained.

  
**A. A. Mbagwa**

**JUDGE**

**05/05/2022**

**Court:** Ruling has been delivered in the presence of the applicant, on the one hand and on the other hand, 3<sup>rd</sup> and 4<sup>th</sup> respondents as well as the respondent counsel, John Manyama this 5<sup>th</sup> day of May, 2022.



*A. A. Mbagwa*  
**A. A. Mbagwa**

**JUDGE**

**05/05/2022**