

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

CIVIL REFERENCE NO 2899 OF 2024

*(Originating from Miscellaneous Land Application No 11 of 2023 of the District
Land Housing Tribunal for Hanang' at Katesh)*

GIRUAWE GIAMU.....APPLICANT

VERSUS

ATHUMANI ADAMU.....RESPONDENT

RULING

2nd and 19th April 2024

MIRINDO, J.:

The Babati District Land and Housing Tribunal upheld an objection on a point of law and dismissed with costs the suit brought by the applicant, Giruawe Giamu. The Tribunal sustained the objection filed by the respondent, Athumani Adamu, that the suit was filed prior to mandatory settlement before a competent

ward tribunal. In a bill of costs for 5,225,000/= TZS, the taxing officer awarded 2,750,000/= TZS being 2,000, 000 /= TZS as instruction fee to counsel for the applicant and 750,000/= TZS as transport and accommodation.

In a reference to this Court, the applicant complains that the award of costs was illegal. The applicant was represented by Mr Alpha Ng'ondya, learned Advocate while the respondent appeared in person. Some days before hearing, the respondent lodged a notice of preliminary objection to the effect that the reference was not served to the respondent within seven days in contravention of the provisions of Order 7 (2) of Advocates Remuneration Order, GN 264 of 2015. I directed the parties to argue both the preliminary objection and the reference together, and this was done by way of written submission.

Responding to the preliminary objection, the respondent argued that the issue of service is a matter of evidence which cannot form part of an objection on a point of law. For quite some time, it was established that failure to service a court was a question of jurisdiction that could be objected to by way of preliminary objection. There was a change on this view in *Awiniel Mtui and 3 Others v Stanley Ephata Kimambo* (Civil Application 7 of 2013) [2013] TZCA 239 (13 December 2013) where the Court of Appeal dismissed an objection that a copy of the written submission was served on the respondent out of the

prescribed time contrary to Rule 106 (7) of the Tanzania Court of Appeal Rules.

The Court held that:

The predominant view of the law is that a preliminary objection is one raised on a pure point of law, on the assumption that the facts are not in dispute, and no exercise of judicial discretion is involved...In the present case, the question of when the respondent was served is a question of fact, not one of law.

I dismiss the objection before me and turn to the merit of the reference. Mr Ng'ondya, learned advocate argued that the value of the subject-matter before the Tribunal was 2,000,000/=TZS, the taxing officer should have applied rates stipulated under item 1 of the Ninth Schedule to the Advocates Remuneration Order. It is provided under item 1 that the fees payable for a claim that does not exceed 2,500,000/= the fees payable shall be between 25 percent and 30 percent. On this basis, the learned advocate, argued that the amount of the instruction fee should have been between 500,000/=TZS and 600,000/= TZS. So, the award of 2,000,000/= TZS was illegal. In opposition to the reference, the respondent argued that the instruction fee was governed by the provisions of item k of the Eleventh Schedule and not the Ninth Schedule. In rejoinder, the learned advocate argued there is no reference to that Order in the decision of the taxing officer.

I would at once point out that there is no evidence that the suit was for liquidated sum and so the provisions of the Ninth Schedule were not applicable.

Even though the taxing officer did not state under which law, the instruction was awarded, I am satisfied that that the award falls under the provisions of the Eleventh Schedule where the minimum amount is 1,000,000/= whether the present case fell under item (k) or item (d). The question is whether the award is manifestly excessive. The taxing master gave no reasons for awarding the amount above the minimum and I have no reason to award the amount above the minimum.

As regards to the award of 750, 000/= TZS, the learned advocate for the applicant complained that these being costs for transport, food and accommodation for the respondent's counsel and the respondent himself should have been properly proved by way of receipts. In particular, the learned advocate argued, the transport costs of the respondent's counsel from Singida to Katesh were excessive in comparison to the bus fare. The taxing officer declared the amount to be reasonable and fair and I do not find anything strange with that amount bearing in mind these costs were incurred on different dates, namely: 15/12/2022; 10/1/2023; 3/3/2023; 17/3/2023; 21/3/2023, 17/4/2024, and 18/4/2023. `

For these reasons, the respondent is entitled to costs totalling 1,750,000/= TZS. Accordingly, the reference is partly allowed. Each party to bear its own costs.

DATED at BABATI this 8th day of April 2024.



F.M. MIRINDO

JUDGE

Court: Ruling delivered this 19th day of April, 2024 in the presence of the Applicant in person, his advocate, Mr Alpha Ng'ondi and in the presence of the respondent in person. B/C: William Makori (RMA) present.



F.M. MIRINDO

JUDGE

19/04/2024