

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**COMMERCIAL DIVISION**

**AT DAR ES SALAAM**

**MISC. COMMERCIAL APPLICATION NO. 1 OF 2023**

**(Arising from the Ruling and Decree of the High Court of Tanzania,  
Commercial Division at Dar es Salaam in Misc. Commercial Application  
No.65 of 2023, delivered by Hon. Minde, DR. on 16<sup>th</sup> June 2023)**

**BETWEEN**

**SAPPHIRE FLOAT GLASS (TANZANIA) LIMITED..... APPLICANT**

**VERSUS**

**AYMAK ATTORNEY.....RESPONDENT**

**RULING**

**Date of last Order:**

**Date of Ruling:02/04/2024**

**GONZI, J.**

At the center of the dispute is the Ruling of this Honourable Court in Misc. Commercial Application No. 65 of 2023 between the Applicant and the Respondent herein. That application which was before the Honourable Taxing Officer, was preferred by the Respondent herein seeking orders for the court to compel the Applicant herein to pay the respondent's legal fees as agreed between them in their remuneration agreement. Apparently, the Respondent as advocates had an engagement letter agreement dated 8<sup>th</sup> July 2022 with the Applicant for the Respondent to

render legal services to the Applicant at the agreed fees. The Respondent claimed that it had rendered designated legal services to the Applicant worth USD 25,000.00 pursuant to that agreement. It was claimed that upon completion of the agreed work, the Applicant had paid the Respondent only USD 10,000.00 thereby having defaulted to pay USD 15,000.00 contrary to their remuneration agreement. On 13<sup>th</sup> June 2023, the Miscellaneous Commercial Application No. 65 of 2023 came for hearing before Hon. Minde, Taxing Officer whereby the Applicant was absent. Exparte hearing was therefore conducted by the Honourable Taxing Officer who proceeded to hear the Respondent only. On 16<sup>th</sup> day of June 2023, the Honourable Deputy Registrar as the Taxing Officer by virtue of the powers conferred to her under Order 5(3)(a) of the Advocates remuneration Order, 2015, delivered an exparte Ruling in favour of the Respondent awarding the Respondent USD.15,000.00 being the unpaid sum from the Terms of the Remuneration Agreement dated 8<sup>th</sup> July 2022 and Tshs.500,000/= was awarded as costs of the application.

On 16<sup>th</sup> January 2024, the applicant filed the present application under Section 14(1) of the Law of Limitation Act, cap 89, Section 61 of

Advocates Act Cap 341 and Rule 5 of Advocates Remuneration Order, 2015. For clarity I reproduce hereunder the relevant portion of the Chamber summons, quoting it verbatim, that:

**“LET ALL THE PARTIES CONCERNED appear before Honourable Registrar/Judge.....sitting in chambers on the 13<sup>th</sup> day of February 2023 when the applicant or his authorized representatives may be heard for the following orders:**

- 1. That the honourable court be pleased to extend the time and set aside the exparte decision delivered by Hon. Minde, Deputy Registrar on 16<sup>th</sup> June 2023 in Misc. Commercial Application No.65 of 2023.**
- 2. Costs of this application be provided and any other relief(s) this honourable Tribunal deem fit to grant”.**

The application was faced with a preliminary objection from the Respondent that:

**The Court has no jurisdiction to entertain the application as it contains prayers /reliefs that are untenable in Law.**

The Respondent therefore prayed that the application be dismissed with costs. The Court on 13<sup>th</sup> February 2024 granted the parties' counsel prayer to argue the preliminary objection by way of written submissions and issued a schedule of filing the respective submissions. Both parties complied with the schedule. The Respondent enjoyed the services of Mr. Rico Adolf, learned advocate while the Applicant enjoyed the services of Mr. Bernard Stephen, learned advocate.

In his submissions in support of the preliminary objection, Mr. Rico Adolf, learned advocate, submitted that the applicant is trying to move the court to grant an extension of time in order to bring an application to set aside the exparte Ruling of the Taxing officer in Misc. Commercial Application No. 65 of 2023. The applicant's counsel submitted that under Order 68 of the Advocates Remuneration Order, a Taxing Officer has powers to proceed to taxation exparte in default of appearance of either or both parties or their advocates. He added that once an exparte decision is issued by the Taxing Officer, there is no remedy of setting it aside rather the remedy is to apply for reference before the High Court Judge under Order 7(1) of the Advocates Remuneration Order. In the event of a party being out of time to file the reference, the remedy is to apply for extension

time to file reference under Order 8(1) and (2) of the Advocates Remuneration Order.

The Respondent's advocate cited the case of **M/S Wulkan Engineering Limited vs Lodhia Plastic Industries Limited**, Civil Reference No.6 of 2023 in which the Court held that:

**The law is very clear that as long as the taxing officer has given a decision which in a way aggrieves either party, or both parties to the case, the only way to channel those grievances is by way of reference and not otherwise.**

The learned counsel for the respondent concluded his submissions by praying for dismissal of the present application with costs.

In his reply submissions, Mr. Bernard Stephen, learned advocate, submitted that the exparte order dated 16<sup>th</sup> June 2023 delivered by the Hon. Deputy Registrar had no finality effect because it had no effect of finally terminating the proceedings in the Commercial Case therefore the argument of filing reference, which is a remedy similar to appeal or revision, against the decision of the Taxing Master, is unfounded. He referred this court to the case of **MIC Tanzania Limited and others versus Golden Globe International Services Limited**, Civil

Application No.1 of 2016 and the case of **DPP versus Farid Hadi Ahmed and 36 Others**, (2021) to substantiate the argument that interlocutory orders are not challengeable by appeal or revision or reference.

The learned counsel for the applicant referred the court to Article 13(6)(a) of the Constitution of the United Republic of Tanzania to the effect that the applicant has the fundamental right to be heard. Also, he cited **Godrej Consumer Products Limited vs HB Worldwide Limited**, Misc. Commercial Application No.82 of 2022 in which, he argued, the Court accepted the remedy of restoration and thereby set aside the order to strike out Taxation Cause of the Taxing Master. He submitted that reference is not the only remedy against the decision of the Taxing Officer rather there is also the remedy of restoration. He argued that Order 7(1) of the Advocates Remuneration Order uses the word "may" to show that reference is an optional remedy and not the only remedy.

By way of rejoinder, the Respondent's counsel submitted that the Advocates Remuneration Order, 2015 provides for reference as the only remedy to challenge the decision of the Taxing Officer and in case there were other options then the applicant could have shown the relevant laws

under which the options are recognized. He argued that all the authorities cited are irrelevant to the case at hand as they do not address the question of how to challenge an ex parte decision of the Taxing Officer. He emphasized that the case of **M/S Wulkan Engineering versus M/S Lodhia Plastic Industries Limited**, Civil Reference No.06/2023 has insisted that reference is the only way to challenge the decision of the Taxing Officer and not the other way round.

I have read the submissions by both counsel and the authorities cited and relied upon by them. I have also perused the records of Misc. Commercial Application Number No.65 of 2023 which were attached by the applicant to form part of his affidavit so as to see the records of the court leading to the present dispute. In my view the outcome of this preliminary objection requires the court to consider firstly as to what kind of decision the applicant in this matter is seeking an extension of time to remedy, what kind of remedy does he seek to pursue and in which forum.

Mr.Rico, the learned counsel for the Respondent submitted that the decision by the Taxing Officer is final and that under Order 7(1) of the Advocates Remuneration Order, GN 263/2015 any party aggrieved by the decision of the Taxing Officer ought to challenge it by way of reference

to a Judge of the High Court and not to have it set aside. He insisted that under Order 68 of the Advocates Remuneration Order, a Taxing Officer has powers to proceed with taxation proceedings ex parte in default of appearance of either or both parties or their advocates. He added that once an ex parte decision is issued by the Taxing Officer, there is no remedy of setting it aside rather the remedy is to apply for reference before the High Court Judge under Order 7(1) of the Advocates Remuneration Order 2015. He argued that in the event of a party being out of time to file the reference application, his remedy is to apply for extension of time to file the reference under Order 8(1) and (2) of the Advocates Remuneration Order. The learned counsel for Applicant Mr. Bernard Stephen, responded and argued that that the ex parte order dated 16<sup>th</sup> June 2023 delivered by the Hon. Deputy Registrar had no finality effect because it had no effect of finally terminating the proceedings before the Commercial Case. He submitted, therefore, that the argument of filing reference, which is a remedy similar to appeal or revision against the decision of the Taxing Master, is not applicable to the applicant in this matter and that is why he is seeking to have the case restored after setting aside the ex parte order of the Hon. Taxing Officer.



I paid a close look at the order of the Honourable Taxing Officer in respect of which extension of time is sought to be impugned. At page 6 of the Ruling, the Hon. Taxing Officer held, and I quote verbatim:

**"In view of that, this court finds merits in the application and allows it as follows:**

- 1. Respondent to pay applicant a sum of USD 15,000 being unpaid sum from Terms of Agreement dated 8<sup>th</sup> July 2022.**
- 2. Applicant award costs in respect of this application at the tune of Tshs. 500,000/-".**

Mr. Bernard Stephen, Learned Advocate for the Applicant has submitted that the above exparte decision dated 16<sup>th</sup> June 2023 delivered by the Hon. Deputy Registrar had no effect of finally terminating the proceedings before the Commercial Case and hence it could not be challenged by way of reference. I asked myself whether the above decision was indeed interlocutory as argued by Mr. Bernard Stephen, learned advocate for the applicant? My answer is in the negative. That exparte decision is final in all respects as it completely disposed of the proceedings in respect of Miscellaneous Commercial Application No.65 of 2023 before the Hon. Taxing Officer. No further proceedings could take place in respect of that

case after the issuance of the exparte order. It granted the reliefs and terminated the proceedings. Any subsequent proceedings in relation thereof would only be in respect of execution of what was ordered and would be though another case in the form of execution proceedings. Therefore, the argument by the learned advocate for the Applicant that the order was interlocutory is untenable. The argument by the Applicant's counsel that there is no enforceable order from the exparte order of the Taxing Master is not tenable. The remedies of restoration of struck out or dismissed cases are not in the purview of the Advocates' Remuneration Order 2015. Even if the remedies were applicable, still the facts of the present case would not have justified their invocation since the Commercial Application No.65/2023 was not dismissed or struck out. It was heard to finality but exparte. As correctly argued by Mr. Rico, learned advocate for the Respondent, the Taxing Officer is empowered to proceed with taxation proceedings in absence of both parties. He is not bound to follow the ordinary procedures of handling an ordinary civil suit. Taxation of costs proceedings are by their nature quarsi administrative.

In essence the preliminary objection is on a point of law that whereas the applicant in the present application is seeking for an extension of time for

the High Court Judge to set aside the *ex parte* decision of the Taxing Officer, in law a decision of the Taxing Officer cannot be set aside hence the application is untenable. It is the law that the court cannot grant an extension of time for the applicant to pursue a remedy which is totally not available to him in law. To do that would amount to an abuse of the court process. To get an extension of time, the remedy must exist and a time-frame to pursue it must have been prescribed by the relevant law, then the applicant who is late to pursue the remedy may bring an application to be granted an additional time so as to be able to pursue the remedy which he ought to have pursued within the prescribed time.

From another angle, It seems that the counsel for the applicant is not sure as to which forum he should seek which remedy in respect of taxation of costs proceedings in the High Court. Looking keenly at the Chamber Summons filed by the Applicant that uncertainty is patently seen when the applicant lodged his application leaving it broad and yawning so that it could either be entertained by a Registrar or a Judge. The applicant's counsel was not specific. He should have known better.

Now, back to the main question posed by the Respondent's counsel, can the decision of the Taxing Officer be set aside by the High Court Judge in

absence of reference proceedings or by the Taxing Officer herself? I agree with the arguments advanced by Mr. Rico Adolf, learned advocate for the Respondent that under the Advocates Remuneration Order, 2015 there is no remedy of setting aside the *ex parte* decision as would be the case under the CPC. Once a Taxing Officer makes a decision whether *ex parte* or *inter partes*, any aggrieved party has the remedy of reference to the High Court Judge under Order 7(1) of the Advocates Remuneration Order, GN.263/2015 which provides that **"any party aggrieved by a decision of the Taxing officer, may file reference to a Judge of the High Court"**. In my considered view, the remedy of reference under Order 7(1) of the Advocates Remuneration Order caters for all "decisions" of the Taxing Officer as a Taxing Officer whether reached *ex parte* or *inter partes*, whether reached after full hearing or without full hearing. Looking at the scheme of the Advocates Remuneration Order, GN.263/2015, the powers and functions of the Taxing Officer with respect to remuneration agreements have been stipulated under Order 5 thereof hence its provisions precede those of Order 7(1). This implies that it was intended for the remedy of reference stipulated under Order 7(1) to cover all grievances which might arise from the exercise of the powers of the

the exercise of the powers of the Taxing Officers which powers are stipulated in the preceding provisions of Order 3, 4, 5 and 6. These powers and functions include powers to determine taxation of costs proceedings arising from bills of costs and to enforce, set aside, or determine any question as to the validity or effect of a remuneration agreement. Taxation proceedings have been defined under Order 3 as an application for taxation of a bill of costs or an application to enforce, set aside, or determine any question as to validity or effect. Order 3 read together with Order 5 of the Advocates Remuneration Order, 2015 presuppose that the Taxing Officer has jurisdiction to set aside a remuneration agreement or any agreement regulating fees or costs of the case during the taxation proceedings before the Taxing Officer. It does not entail the Taxing Officer setting aside her own *ex parte* decisions resulting from the Taxation proceedings. Neither does that law empower the High Court Judge to set aside *ex parte* decisions of the Taxing Officer in any other way than in exercise of the reference jurisdiction under Order 7(1) that is where proceedings have been brought by way of reference.

The Applicant has resorted to the provisions of the Civil Procedure Code which provide the remedy of a judicial officer to set aside an exparte order. He has cited even some authorities to support his argument. In my view he has misconceived the said authorities. In my understanding, the decision of this court (as per Hon. Maruma, J.) in **Godrej Consumer Products Limited versus HB Worldwide Limited** (2022) emanated from an application for reference where an aggrieved party successfully challenged the decision of the Taxing Officer who had struck out a Taxation case for want of prosecution. The Court in entertaining the reference application exercised its powers under Order 7 (1) of the Advocates Remuneration Order and set aside the order of the Taxing Officer consequently restored the struck-out case. But the situation at hand is completely different. The applicant has not filed an application for reference and he is not seeking an extension of time to file reference against the exparte order of the Taxing Officer. The Applicant is seeking an extension of time under the Law of Limitation Act and other provisions which are all not applicable to taxation proceedings, in order to simultaneously set aside the exparte order of the Taxing Officer on the assumption that the exparte order of the Taxing Officer did not bring the

proceedings in Misc. Commercial Application No. 65/2023 to finality. But the exparte Order was final and it effectively terminated the proceedings before the Taxing Officer. The Taxing Officer has no powers to set aside her exparte decision. Before me reference is not in the menu of intended remedies that the applicant has showcased in his chamber application where actually he is seeking for **"the Honourable Court be pleased to extend the time and set aside the exparte decision delivered by Hon. Minde, Deputy Registrar on 16<sup>th</sup> June 2023 in Misc. Commercial Application No.65 of 2023"**. In my settled view, the Applicant before me is seeking two prayers at the same time namely extension of time and setting aside the exparte Order of the Taxing Officer. The application brings more confusion than clarity and actually was written in a hasty that it was purportedly being filed in an undesignated Tribunal. Also, although not a total irregularity, the enabling provisions cited are not applicable to an application for extension of time to lodge reference against the decision of the Taxing Officer. The Advocates Remuneration Order is sufficient under Order 8 thereof, why would the Applicant go to look for the aid of general laws while there is in existence a specific law to cover his situation? Actually, the Law of

to situations like the present ones where there is a period of limitation fixed by another law. The Law of Limitation Act does not apply to regulate the time limit for filing Bills of costs or reference against decisions of the Taxing Officer. These time frames are already prescribed in the Advocates Remuneration Order, 2015. The Law of Limitation Act regulates suits, appeals and applications as shown in the schedule thereto. Even if the Law of Limitation Act were to apply in the application at hand, an issue for which there is a specific law namely the Advocates Remuneration Order, 2015, yet section 43(f) and section 46 of the Law of Limitation Act Cap 89 would give precedence to the specific law over the Law of Limitation Act. I reproduce sections 43(f) and 46 of the Law of Limitation Act:

**43. This Act shall not apply to-**

**(f) any proceeding for which a period of limitation is prescribed by any other written law, save to the extent provided for in section 46.**

**46. Where a period of limitation for any proceeding is prescribed by any other written law, then, unless the contrary intention appears in such written law, and subject to the provisions of**




**section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act.**

It is clear therefore that where there is a special written law prescribing limitation of time, the Law of Limitation Act does not apply. This is in terms of section 43(f) of the Law of limitation Act. Even where it applies, then it applies only to the extent of adopting the period of limitation prescribed by that other written law as if it had been prescribed by the Law of Limitation Act itself. As I have pointed out, it is settled that a wrong citation of an enabling provision even a non citation thereof is not fatal anymore in Tanzania. Therefore, this observation of the applicant having relied upon wrong provisions of law does not constitute the rationale for my decision. I have made that exposure in an attempt to show that it seems that the applicant was carried away by his heavy reliance upon the general laws and the procedures obtaining under them to the extent that he forgot to abide by the specific procedures obtaining under the Advocates Remuneration Order. He ended praying for reliefs ordinarily obtaining under those general laws and ignored the specific relief provided by the specific law namely reference. Since the remedy in respect of which an extension of time is sought by the applicant is not

available in law, the application at hand does not deserve to be entertained by the court. In that regard, the application is bound to be dismissed.


Without much ado, the preliminary objection raised by the Applicant's Counsel is hereby upheld. The application is dismissed with costs.



  
**A.H. GONZI**  
**JUDGE**  
**02/04/2024**

Ruling is delivered in court this 2<sup>nd</sup> day of April 2024 in the presence of Mr. Rico Adolf, learned advocate for the Respondent who is also holding brief for Mr. Datus Faustin learned advocate for the Applicant.



  
**A. H. GONZI**  
**JUDGE**  
**02/04/2024**