

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 27 OF 1996

Between

GEORGE M. SHAMBWE..... APPELLANT

Versus

1. THE HON. ATTORNEY GENERAL 1ST RESPONDENT
2. PETER SIGELA NSWIMA 2ND RESPONDENT

(Appeal from the decision of High
Court of Tanzania at Mbeya)

(Moshi, J)

dated the 1st March, 1996

in

Miscellaneous Civil Cause No. 11 of 1995

R U L I N G

LUANDA, SDR-CA TAXING OFFICER:

One GEORGE SHAMBWE (hereinafter referred to as the Decree - Holder) who is unrepresented in this Bill of costs filed a Bill of costs amounting to TSh. 5,90,800/= against the Honourable Attorney General and Peter Sigela Nswima (hereinafter referred to as the 1st and 2nd Judgment - Debtors respectively).

When the Bill of costs came for hearing Mr. Mselem, Learned Advocate who assisted Mr. Kilindu, Learned counsel for the 2nd Judgment - Debtor raised three preliminary matters. First, the Bill of Costs filed was not drawn by an advocate as required by law. The same was drawn by the Decree Holder. This goes contrary to the Court of Appeal Rules, 1979 namely; Third schedule Taxation of costs of sub - para 1 of paragraph 2. As the word shall is used then it is mandatory.

According to Mr. Mselem this sub paragraph was created so that the advocate who presented the party know exactly what expenses he had incurred by certifying the folios. Mr. Mselem went on to say they would like to know whether Dr. Lamwai, Learned Advocate who represented the Decree - Holder during the hearing of the Appeal was paid TSh. 4m/=. Second, the Bill of Costs was wrongly drafted. This goes contrary to sub paragraph 1 of paragraph 3 of the Third Schedule Taxation of costs. He went on to say the manner of showing columns are mandatory so that one to know what actually took place on a particular day and not be in serial as shown. He cited incidences which support his contention that the Bill of costs doesnot march with the format required.

Lastly Mr. Mselem submitted to the effect that some items in the Bill of Costs are not costs incurred in the Court of Appeal of Tanzania rather they were incurred in the High Court, Mbeya. He cited items 3 to 7. In fact the High Court Mbeya had awarded them costs. He thus prayed the Bill of costs be struck out with costs to two counsels.

Mr. Mwidunda Counsel for the 1st Judgment - Debtor subscribed to the preliminary matters raised by Mr. Mselem. He pray that the Bill of costs be struck out with costs.

The Decree - Holder on the otherhand conceded to have prepared the Bill of Costs himself. He gave reason for doing so. He said his advocate refused to file the Bill of Costs after they differ. As regard to the format the Decree Holder said the Court can order an amendment be effected. He went on to say though he had no receipt he had travelled.

As regard to inclusion of matters of the High Court, the Decree Holder apologize. But he prayed that the Bill of Costs be taxed.

Let me start with the first ground.

In the first ground Mr. Mselem contended that the Bill of Costs was not drawn by an advocate as required by law i.e. Sub - para 1 - para 2 of the Third Schedule Taxation of costs.

The sub - paragraph reads:-

Where costs are to be taxed, the advocate for the party ~~to whom the costs were awarded shall lodge his bill with the taxing officer and shall, before or within seven days after lodging it, serve a copy of it on the advocate for the party liable to pay.~~ (Underscoring mine)

The sub - paragraph doesn't barred a party who is unrepresented to draw a Bill of Costs. The operative word is lodge and not drawn. And this to my view should be interpreted to mean if one had an advocate. If one had none than he can draw and lodge his Bill of costs. I say so because at times parties to a case do appear without an advocate and the Court of Appeal do award costs to a successful party and the same are taxed.

In the instant case the Decree Holder said that his advocate refused to draw and lodge the Bill of Costs. The Decree Holder should not be deprived his right for no fault of his. Accordingly the Decree Holder was right in drawing and lodging his Bill of Costs.

Let me turn to the issue of format. Admittedly the Bill of Costs doesn't conform with the requirements of sub -

paragraph 1 of para 3 of the Third Schedule - Taxation of Costs. Mr. Mselem submitted that, that was mandatory. The question is whether the word shall in this context is mandatory.

It is my considered view that sub paragraph is designed to make sure that details of the claim are particularized so that a taxing officer and parties to the Bill of Costs could easily make a follow up and know the claim put across. But such spirit and endeavour cannot justify construing the word "shall" as imposing ~~a strict or~~ mandatory requirement as contended by Mr. Mselem. ~~So the word shall is not mandatory.~~ This Court can tax a Bill of Costs which doesnot conform with the requirement of the above named sub - paragraph provided the taxing officer and the parties know what is the nature of the claim put across.

Finally is the issue of putting some High Court matters in the Bill of Costs. Sub - Rule (1) of Rule 118 of the Court of Appeal Rules, 1979 is very clear that the powers of the taxing officer is in respect of decisions emanating from the Court of Appeal of Tanzania and no more. So matters pertaining to High Court are not within my ambit. To put it differently I have no jurisdiction to tax issues of costs on matters coming from the High Court.

Now taking the defectiveness of the Bill of Costs coupled with inclusion of High Court matters it makes the Bill of costs as an empty shell not worth a name.

Accordingly, the same is struck out with costs for one counsel for the 2nd Judgment Debtor.

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For avoidance of doubt the Decree - Holder is at liberty
to lodge fresh Bill of Costs subject to the law of limitation.

DATED at DAR ES SALAAM this 28th day of May, 1997

(B. M. LUANDA)
TAXING OFFICER

28/05/97