

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MUNUO, J.A., NSEKELA, J.A., And MSOFFE, J.A.)

**CIVIL APPLICATION NO. 10 OF 2001
In the Matter of an Intended Appeal**

BETWEEN

ERIC SIKUJUA NG'MARYO APPLICANT

AND

JOSEPH SINDE WARIOBA RESPONDENT

**(Application for Revision from the Ruling and Order
of the High Court of Tanzania at Dar es Salaam)**

(Kalegeya, J.)

dated the 9th day of August, 2001

in

Miscellaneous Civil Cause No. 155 of 1998

R U L I N G

MUNUO, J.A.:

The applicant brought the present Notice of Motion under the provisions of Section 4 (3) of the Appellate Jurisdiction Act, 1979 as Amended by Section 2 of the Appellate Jurisdiction Amendment Act, 1993 and Rule 3 (2) and 45 of the Court of Appeal Rules, 1979, moving the Court:-

“(a) to call and examine the proceedings and Ruling in Miscellaneous Civil Cause No. 155 in the High Court of Tanzania at Dar es Salaam to satisfy itself as to correctness, legality and

propriety of the assumption by Kalegeya, J. to tax the advocate's bill of the applicant;

- (a) to satisfy itself as to the correctness, legality and propriety of the learned trial Judge giving leave to selected parties to address the Court on a taxation matter and subsequently issue a full fledged Ruling and Order; and
- (b) to satisfy itself on the correctness, legality and propriety of the High Court of Tanzania in avoiding to address itself on the question of its powers to tax the applicant advocate's bill and instead raising other extraneous grounds and dismissing it."

Before proceeding to determine the revisional application, we first have to satisfy ourselves that the same is competent. Among other authorities laid down by the Court on revision, is the case of **Halais Pro-Chemie versus Wella A.G.** (1996) TLR 269 in which the Court determined when the Court's revisional jurisdiction may be invoked. In that case and unlike in the present revision, the application was time barred because it was instituted ten months after the delivery of the judgement. The Court pronounced the conditions for invoking its revisional jurisdiction and held that –

- “(i) the Court can, on its own motion and at any time, invoke its revisional jurisdiction in respect of proceedings in the High Court.
- (i) Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as the alternative to the appellate jurisdiction of the Court.
- (ii) In matters which are not appealable with or without leave, a party to the proceedings in the High Court can invoke the revisional jurisdiction of the Court.
- (iii) Where the appellate process has been blocked by the judicial process, a party to the proceedings can resort to revision.”

The present application is peculiar in that it does not routinely arise from a ruling, order or judgement of the High Court. The Provisional Liquidator of Fahari Bottlers Ltd. referred the demand fee note of the applicant to the High Court in the following terms:

- “(b) Mr. Eric Ng’maryo has presented a fee note to the amount of 10% of realization from the assets. He bases his claim on the fact that

he was the advocate of the petitioners and when the hive-down was overruled the provisional liquidator stepped into the shoes of the Petitioners. I would request directions on whether I have responsibility to pay Mr. Ng'maryo's costs and also on the quantum."

We are of the view that since the matter was referred to the High Court for directions by way of request, and as there were no pleadings, the applicant rightly invoked the revisional powers of this Court for want of a right of appeal against the Ruling of the learned Judge. We are satisfied that the application falls under items (ii) and (iii) of the above holding in **Halais Pro-Chemie** case.

The above said, we now turn to the merits of the revision. Representing the applicant, Dr. Nguluma, learned advocate, raised two issues namely –

- (a) whether a Judge of the High Court can tax the fees of an advocate; and
- (b) whether the applicant was entitled to fees as liquidators.

Counsel for the applicant maintained that the learned Judge lacks taxation powers so he ought to have directed the taxing officer to tax the fee demanded by the applicant. He observed that under Rule 2 of the Advocates (Remuneration and Taxation Costs) Rules, 1991 the taxing officer is the Registrar or District Registrar or Deputy Registrar of High Court. The applicant's counsel further submitted that the jurisdiction of the High Court over taxation of advocates' bills has been ousted by Rule 5 (1) of the Advocates (Remuneration and Taxation Costs) Rules, 1991 under which references from the taxing officer lie to the High Court so since the High Court would hear appeals from taxation decisions, the same court would not simultaneously have trial powers in the same realm. For want of jurisdiction, therefore, Dr. Nguluma urged us to quash the Ruling by Kalegeya, J. so that taxation of the fee demanded by the applicant can take its course under the charge of a taxing officer.

For the respondent, Mr. Nyanduga, learned advocate contended that no bill of costs was taxed by the learned trial judge for the Provisional Liquidator referred the matter to him not for taxation but for directions only. This, counsel for the respondent

stated, is provided for under paragraph (h) of the Liquidators powers which states:-

“(h) The Provisional Liquidator will be at liberty at any time, to apply to the Court for directions and guidance on anything he deems proper and which has a bearing to Petitions.”

It is the contention of Mr. Nyanduga who was assisted by Ms. De Melo and Ms. Ringo, learned advocates, that the learned Judge acted within his powers under the above paragraph (h) so the application for revision is misconceived and ought, therefore, to be dismissed with costs.

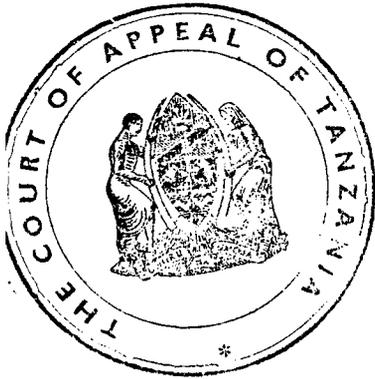
As to whether the learned Judge has powers to tax the fees of the applicant advocate, we firmly respond in the negative because as stated above, taxation powers are conferred on taxing officers. Taxation would only reach the learned Judge on appeal. This position is provided for under Rules 2 and 5 of the Advocates (Remuneration and Taxation Costs) Rules, 1991. We think the learned Judge mis-titled the directions to the Provisional Liquidator “RULING” which implied that he taxed the bill of costs of the applicant, jurisdiction the learned Judge did not and does not have.

Under the circumstances we quash and set aside the material Ruling. We order that the matter be placed before another Judge who shall direct the taxing officer to deal with the same.

In view of the above, the application is allowed with costs.

DATED AT DAR ES SALAAM this 27th day of January, 2005.

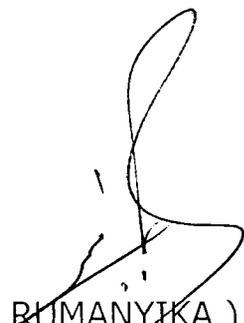
E.N. MUNUO
JUSTICE OF APPEAL



H. R. NSEKELA
JUSTICE OF APPEAL

J. H. MSOFFE
JUSTICE OF APPEAL

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


(S. M. RUMANYIKA)
DEPUTY REGISTRAR