IN THE HIGH COURT OF TANZANIA

AT DODOMA

DC CIVIL APPEAL NO. 21 OF 2007
(ORIGINAL DISTRICT COURT OF DODOMA
AT DODOMA - CIVIL CASE NO. 27 OF 1999
BEFORE S.H. KINEMELA ESQ. RESIDENT MAGISTRATE)

MALILO KACHUGU ..... APPELLANT

Versus

KHANIMA ABDULKHABIB MAKBEL ..... RESPONDENT

15/09/2009 & 23/10/2009

RULING

HON. MADAM SHANGALI, J.

In the Civil Case No. 27 OF 1999 before Dodoma District Court, one **LITENDE SIBITABO** sued two people namely **MALILO S/O IDDI KACHUGU** as first defendant and **KHANIMA ABDULKHABIB MAKBEL** as second defendant over a house sale dispute. On 9th November, 2000, the trial resident Magistrate pronounced his judgement in favour of the plaintiff **LITENDE SIBITABO** and ordered the first defendant **MALILO S/O IDDI KACHUGU** to pay the costs of the suit. No appeal was preferred from that decision.

Consequent to that decision the second defendant filed her bill of costs against the first defendant Malilo claiming a total sum of TShs.602,500/=. In her decision dated 11th September, 2002, the taxing officer allowed TShs.543,000/= and taxed off the rest.

MALILO S/O IDD KACHUGU (appellant) was not safistified with that decision hence this appeal. In his single ground of appeal the appellant avers that the taxing officer erred in law and fact in assessing the costs, the way she did without considering the nature of the case.

During the hearing of this appeal the appellant who appeared in person and unrepresented argued that the trial court ordered him to refund to the respondent (second defendant) the purchase price of the house, fees paid to the local authority and rent collected from the date of sale of the house. He further stated that the court found in favour of the plaintiff and ordered that the suit premises be returned to the plaintiff with costs to be paid by the first defendant. The appellant argued that it was not the respondent (second defendant) who neither filed the case nor won the same; and therefore she is not entitled to any costs. He insisted that the taxing officer was wrong to asses and allow the costs in favour of the respondent (second defendant) without any specific directives from the trial District Court.

Mr. Nyangarika, learned advocate who represented the respondent submitted that the trial District Court ordered the

appellant (first defendant) to pay the costs of the suit. He argued that the reason behind that order was because it was the appellant who caused the whole problem.

Mr. Nyangarika submitted that the main issue in this appeal as shown in the memorandum of appeal is the issue of assessment of cost of which the appellant failed to submit on it.

Mr. Nyangarika contended that the assessment of costs was properly done by the taxing officer and the decision thereof is sound and proper.

The first issue in this matter is whether it was correctly filed in this court as an appeal. This being a challenge on the bill of costs determined by the taxing officer should have been filed in this court as a reference rather than appeal. Nonetheless, without wasting much time, I am of the opinion that it is innocuous irregularity. In other words it is a curable irregularity because it did not occasion any failure of justice on any party to the matter.

It is now principle of the law that a decision of a taxing officer will be interfered with by a court only when the court is satisfied that the decision was arrived at upon an application of a wrong principle, misconception or a wrong consideration – see the case of **GEORGE MBUGUZI ABND ANOTHER VS. A.S. MASIKI (1980) TLR No. 53.**

The crucial and important question in the present matter is whether the trial Resident Magistrate ordered the appellant (first defendant) to pay costs of the suit to both the plaintiff and the respondent (second defendant).

In matters of taxation and costs, the general rule his that costs should follow the event; meaning that the successful party is entitled to his costs. However, the courts have discretion to award costs differently without following the event. Where the court decides to exercise its discretion it must give reasons and expressly give directions on the mode of payment of costs. In his /judgement, dated 9th November, 2000, the trial Resident Magistrate simply stated as follows;-

> *"Further, the first defendant has to pay costs of this suit . . ."*

The question is whether that phrase means that the first defendant (appellant) was ordered to pay costs of the suit to the both plaintiff and the second defendant, the respondent. My quick response is in negative. There is nowhere in that decision of the trial Resident Magistrate directing the first defendant/appellant to pay costs of the suit to both the plaintiff and respondent. The case was Determined in favour of the plaintiff who sued both the appellant and respondent. The trial court found that the transaction of the sale of

the disputed house between the appellant and respondent was a nullity. The appellant was ordered to refund to the respondent the purchase price of the house, fees paid to the local authority and rent collected by the appellant. The alleged disputed house was returned to the plaintiff. Then the trial court went ahead and ordered the appellant/first defendant to pay costs of the suit.

The contention by Mr. Nyangarika, Learned advocate for the respondent that the trial court ordered the appellant to pay costs to both the plaintiff and second defendant (respondent) because it was the appellant who caused the whole problem has no support from the trial Resident Magistrate's judgement. That is the counsel's own conjecture and reasoning. My simple and straight forward interpretation of the trial court's phrase is that the person who was awarded costs is the plaintiff who won the case, and the person responsible to pay the costs is the appellant who sold the house without authority.

Let me put it here clear, that, in my considered opinion if the trial District Court intended the appellant to pay costs to both the plaintiff and respondent it should have directed so in no uncertain terms. That was not done, and therefore the respondent (second defendant) was not awarded any costs of the suit.

For future guidance, before the taxing officer embark on entertaining an application for assessment of the bill of costs he

should satisfy himself on whether the applicant was indeed granted costs by the court. I am certain that had the taxing officer started from that premise of thinking and reasoning she would not have entertained this contentions bill of costs.

In the upshot, I see no reason to discuss the second issue of assessment of costs. This appeal is allowed. The decision on the assessment of bill of costs dated 11th September, 2002 is set aside.

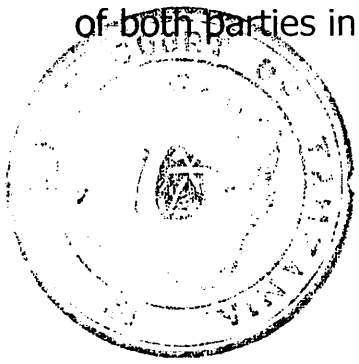
Each party to shoulder its own costs in this appeal.

M.S. SHANGALI

JUDGE

23/10/2009

COURT:- Ruling delivered todate 23rd October, 2009 in the presence of both parties in person.



M.S. SHANGALI

JUDGE

23/10/2009