

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**

**REFERENCE NO. 26041 OF 2023**

(Arising from Bill of Costs No. 249 of 2022, Land Division)

**STAR MEDIA (T) LIMITED.....1<sup>ST</sup> APPLICANT**  
**EPHANIA SAMSON RUHANYALA.....2<sup>ND</sup> APPLICANT**  
***VERSUS***  
**GIDION WILLIAM SHIRIMA.....RESPONDENT**

**RULING**

2<sup>nd</sup> to 8<sup>th</sup> April, 2024

**E.B. LUVANDA, J**

This reference is against an award of Tsh 2,400,000 which was taxed by the taxing officer out a bill of Tsh 30,550,000 which was charged by the Respondent herein who was the Applicant therein. The ground of complaint are stated at paragraph seven of the affidavit in support of this reference: One, the learned taxing master (sic, officer) erroneously awarded the Respondent Tsh 2,400,000 out of the total claimed excessive amount of Tsh 30,550,000 contrary to the principles governing taxation of costs; Two, the taxing master (sic, officer) erred determining (sic) the instant matter while the Applicants have lodged notice of appeal and further on 5/05/2023 the

Court of Appeal vide Civil Application No. 279/17 of 2023 between the same parties herein had stayed this Court to adjudicate on the matter; Three, the learned taxing master (sic, officer) erred in law and fact in taxing the bill of costs to a tune of Tsh 2,400,000 without any receipts being exhibited in court providing the same to have been incurred by the Respondent in defending the appeal.

The Applicants submitted that there is no doubt that the Respondent presented the bill of costs to the tune of Tsh 30,550,000 out of which, only 2,400,000 was taxed and the amount of Tsh 28,150,000 was taxed off. They submitted that the amount which was taxed off is far and beyond one-sixth of the total amount claimed, arguing the taxing officer ought to have disallowed the bill of costs in its entirety, citing order 48 of the Advocates Remuneration Order G.N. 264 of 2015; **EFC Tanzania Microfinance Bank Ltd and Another vs Peter Zacharia Samo**, Reference No. 21 of 2023 HC Land Division; **Regional Commissioner for Shinyanga vs Benard Msonga Sizasiza**, Civil Reference No. 1 of 2020 TZHC

They submitted that what was presented and charged by the Respondent it is very justified and convinced that costs presented is too high and it is against the law.

Ground number two, the Applicants submitted that they lodged a notice of appeal against the decision in Land Appeal No. 291 of 2021 and the apex Court stayed the execution of this matter until disposal of the appeal before the Court of Appeal. They submitted that this Court cease to have jurisdiction to proceed to hear and determine the bill of costs, citing **Arcado Ntagazwa vs Buyogera Bunyombo** [1997] TLR 242.

Ground number three, the Appellants submitted that the amount of Tsh 2,400,000 was awarded without receipts, arguing is contrary to the law citing sections 110(1) and (2) and 111 of the Evidence Act, Cap 6 R.E. 2019.

Ms. Victoria Gregory learned Counsel for Respondent responded that the amount of Tsh 30,000,000 was a typing error and was rectified after seeking the leave of the court to read 3,000,000/=, citing page two second and third paragraph of the impugned ruling.

Ground number two, the learned Counsel submitted that a notice of appeal does not act as a stay of bill of costs and does not bar the determination of the proceedings of bill of costs, citing **Mohamed Kanji vs NAC Group Ltd**, Reference No. 22 of 2022, Land Division. She submitted that the apex Court did not stay bill of costs rather specifically stayed execution of the decree of

the District Land and Housing Tribunal in Consolidated Execution No. 463 of 2010 and 34 of 2011.

Ground number three the learned Counsel submitted that it is not compulsory to furnish receipts in support of bill of costs. She submitted that furnishing receipts is necessary only if required by the taxing master (sic, officer), citing rule 58(1) GN 264 (supra).

On rejoinder, the Appellants submitted that a party cannot seek amendment of the bill of costs at the hearing (submission) stage. They submitted that the alleged correction for the bill of costs to read 3,000,000 instead of 30,550,000 is an afterthought aimed to pre-empting their ground of appeal. They submitted that the High Court cease to have jurisdiction to hear the bill of costs once a notice of appeal is lodged, citing **Arcado Ntagazwa** (supra).

On my part, all grounds under which this reference is pegged on, lack merit. At page two second paragraph of the impugned ruling, the taxing officer allowed a prayer to have a bill for instruction fees to read 3,000,000 instead of 30,000,000. Therefore, an argument of the Applicants that it was done to circumvent their grounds of objection on this reference, are totally misconceived. Equally an argument that a correction of a bill cannot be done

at the hearing stage, is an afterthought. To my view, that ought to be preferred as a separate and substantive grounds of objection to the award and not to introduce it at the rejoinder stage. My undertaking is grounded on a fact that this argument of a bill flawing rule 48 of GN 264 was raised by the Applicants before the taxing officer, who appeared to have snubbed their argument, due to a fact that at page four second paragraph of the impugned ruling, the taxing officer made reference to a figure of 3,000,000 as an amount charged for instruction fees. It was imperative for the Applicants, to raise this ground as a separate grounds of complaint as aforesaid. Otherwise I found it lacking merit.

For ground number two, the position of this Court is that a notice of appeal lodged at the apex Court does not disable bill of costs. In **Mohamed Kanji** (supra), this Court ruled,

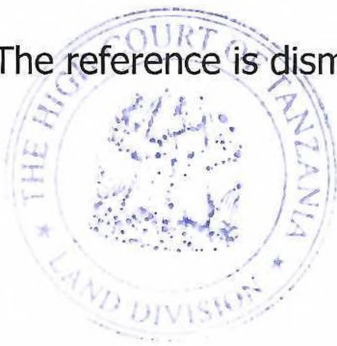
*"... the decree holder is not barred to lodge bill of costs and the Taxing Officer may proceed with the hearing of the bill even if there is pendency of an appeal or notice of appeal..."*

Equally the cited *ex parte* order for stay made by the apex Court in Civil Application No. 279/17 of 2023, is totally irrelevant and inapplicable. Therein, the apex Court made clear that it is staying Consolidate Execution No. 463

of 2010 and 34 of 2011 before the DLHT. A bill of costs is not an execution for all intents and purposes. Secondly, this Court is not a DLHT. Therefore, the same was cited as a funny.

Ground number three, the provision of sections 110(1) and (2) and 111 Cap 6 (supra) does not call for a mandatory requirement of proof by way of receipts, nor say each and every fact must be proved by documentary evidence. The argument of the learned Counsel for Respondent who submitted that production of receipts in respect of a bill for disbursement charged in the bill of costs, is at the discretion of the taxing officer, is a correct stance of the law, see rule 58(1) of GN 263 (supra).

The reference is dismissed. No order for costs.



E. B. LUVANDA  
**JUDGE**  
08/04/2024

Ruling delivered in the presence of Mr. Cleophas James Advocate holding brief for Mr. Adolf Mahay for the Applicants, Mr. Peter Swai learned Advocate for the Respondent.



E. B. LUVANDA  
**JUDGE**  
08/04/2024