

TANZANIA / JUDGMENT

20100212 TZCA Dar es Salaam

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12 February 2010

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1 IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (CORAM: MSOFFE, I.A., MBAROUK, I.A., And LUANDA, I.A.) TAXATION REFERENCE NO. 12 OF 2007 I I JOHN ELIAFYE !..... APPLICANT VERSUS I MICHAEL LESANI KWEKA J.... RESPONDENT I I I (Reference from the Decision of a single Judge I of the Court of Appeal of Tanzania at Dar es' Salaam) (Kileo, I.A.) J dated the 23 rd day of October, 200 in Taxation Reference No. 7 of 2005 RULING OF THE COURT 10th February, & 3 rd March, 2010 MBAROUK, J.A. Before us is a taxation reference from the ruling of a single Judge (Kileo, J.A.) in Taxation Reference No. 7 of 2005, made under Rule 119(5) of the Court of Appeal Rules, 1979. When the reference was called on for hearing, the respondent was absent though duly served through the office of his advocate Mr. Sylvester Shayo on 2nd February, 2010. For such non - appearance of 2 the respondent the Court invoked ~ule 63(2) of the Court of Appeal [J Rules 2009 and ordered the referende to proceed for hearing. I At the hearing, the applicand appeared in pJrson. He faulted f the learned single Judge for not ha~ing considered is submission on items No. 2 and 7 to his bill of cosl as presented !before the Taxing Officer. The applicant further sJmitted that, tJe learned single ~ I Judge erred when she agreed td all what the advocate for the respondent submitted. Looking at items No. 2 and 7 ~f the bill of cosfs, the applicant is I claiming, fees he paid for legal i consultation arid preparation of I I defence in Civil Application No. 6 tf 1996 and Civil[Appeal No. 51 of

1997. However, he failed to produle any receipt w~ich he paid to the advocate. He even failed to naml the advocate who assisted him. The applicant further faulted the l~arned single Ju~ge for not taking into consideration the work done ,in filing his sup~lementary record, I presumably done by a lawyer. He insisted that, he incurred expenses ! 3 to which, the Taxation Officer and tHe learned single Judge ought to have awarded him something. As pointed out earlier, the app icant is aggrieved by the Taxing Officer's decision on the amounts clalmed for legal cdnsultation which was also later dismissed in a referlnce before a Jingle Judge. So undaunted, he has filed this reference. In this Taxltion Reference, our main task is to examine wheJher the Taxing Officer and the learned single Judge applied a wrohg principle after disallowing the amounts claimed for legal consultanb in items No. dand 7 of the bill of costs. The charges claimed in ite . No. 2 were 1.Shs. 500,000/= whereas in item No. 7, the charges blaimed were T.ihs. 1,200,000/= . . I The applicant conceded that he did not produci any receipt or document to substantiate the paymlent he made to ihe

advocate who assisted him for the legal consultancy or preparation of the documents he has filed in court. In the case of Prehand Raichand v. Quarn1 Services of East Africa Ltd and Others [1972] E.A 162, the erstwhile Court of Appeal for East Africa gave the following principles before the court: allows costs:- (i) (a) that costs be allowed to rise to such a level as to confine access to the courts to the wealthy; (b)

- (b) that a successful litigant ought to be fairly reimbursed for the costs he has to incur.
- (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession; and
- (d) that so far as practicable there should be consistency in the awards made. (ii) the Court will only interfere when the award of taxing officer is so high or so low as to amount to an injustice.

- (111) (IV) " In the instant case, the applicant claims for the reimbursement of the legal consultancy and preparation of defence made by an unnamed advocate. Taking into account the principle that a successful litigant ought to be fairly reimbursed for the costs he has incurred, the applicant has no receipt or document to substantiate the costs he has incurred. How can he be reimbursed at the time when there is no evidence that he has incurred the costs he is claiming. We, just like the learned single Judge are of the considered opinion that legal consultancy costs can only be awarded where it is proven that the payments were actually made to a registered advocate. As shown herein above, the applicant has even failed to name the advocate who assisted him in legal consultancy and preparation of his defence. In the event, we find no reason to interfere with the decision of the single Judge concerning the legal consultancy costs. For the reasons stated herein above, the reference fails, and is hereby dismissed with no order as to costs. DATED at DAR ES SALAAM this 12th day of February, 2010; J.H. MSOFFE JUSTICE OF APPEAL M.S. MBAROUK JUSTICE OF APPEAL B.M. LUANDA JUSTICE OF APPEAL. Inal. alewoj---., EGISTRA'

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Prepared on 25 October 2026 · Esheria