

TANZANIA / JUDGMENT

20040827 TZCA Dar es Salaam

COURT
TZCADECIDED
27 August 2004

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IJ IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CIVIL APPEAL NO. 13 OF 1998
BETWEEN THE A1FORNEY GENERAL APPELLANT AND LEONARD
MARIKI & 20 OTHERS RESPONDENTS

RULING

RUMANYIKA, DR-CA/TAXING OFFICER: Neither during the taxation nor at any given time, was the background of this matter given to me by the parties. Be it through the documents lodged or elsewhere what is availably present is a copy of demand note addressed by Mr. Kashumbugu, Advocate for the 41 Respondents to the Principal Secretary Ministry of Education & Culture, of Tshs. 76,255,594.35 being their terminal benefits upon having been retrenched. The Attorney General for the Appellant. Sometime somehow here, the number of respondents seems to had dropped to on 21 of them. The appellant lost the case at the High Court (Madame, Bubeshi, J.). Then appealed to this Court, and lost it further more. As such, the court of appeal (T) dismissed the

- appeal, and the respondents had to have their costs. Hence this bill
- of costs (the bill). As such unlike others I. have had come across, this bill if ONLY ONE ITEMIZED. Very short and brief it is in totaling, of. Tshs. 2,268,308.45 under one and some cover of instructions to defend Messrs Kashumbugu, Advocate and Chidowu, State Attorney, appear for the Respondent/Applicant and Appellant/Respondent respectively. Mr. Kashumbugu argued his bill in very hardly, a 30 worded summary. That they had only an item. They prayed that the bill be taxed as presented. It was not a huge amount of money for the Government to pay. Mr. Chidowu in reply, submitted that this application was brought under Rule 118 of this Court Rules, to be read together with the 3 rd schedule to the Rules. And that the issue now, was whether quantum as presented was to be regarded reasonable one. Regarding the circumstances. S .1 3 That is was for him (Kashumbugu) to defend the applicant in the court on appeal. But even before the counsel did his job, before the court f appeal, the matter was withdrawn. So in real fact, no actual work was done. Mr. Chidowu submitted. 3rd schedule to the Rules of this Court That Rule 9 of the particularly Rule 4 demonstrated legal position. And lastly since the counsel of the applicant, had presented no document(s) relevant to the bill, the sum claimed was doubtful, as to if really, the money was paid. In his rejoinder, Mr. Kashumbugu called upon the Taxing Officer to reasonably

consider the bill as the affair was .guided by Rule 9. But there was an appeal, which they undertook to oppose. So their work done. I may feel obliged, to first of all react to the general submission by Mr. Kashumbugu, that the sum claimed was not too huge for the Government to effect the payment. He might, respectfully be wrong because, the Government, provided legal liability had been established was to pay and had no other options. Regardless of, . I - 4 degree of liability. And it could not for that matter pay, just like that, simply because the amount ordered by the court was a pinnat. As such, the costs claimed are so general (not because are in a single item) that I feel compelled to tax reasonably general also, I believe the amount, whatever scale might be, includes defending the appeal, transport to and from the court, presentation and filling the documents, disbursements I suppose, and so on. General as the bill appears; it is not made known to me, which sub-item fetches how much, well in violation of Rules 3 of the 3rd schedule to the Court of Appeal Rules, 1979. Any other sub-item, was it so made clearly and separately, would make me the job easier, but also, for the respondent's address. Assuming the bill, includes disbursements item also neither Mr. Chidowu nor myself had an opportunity to address it. Let alone, no receipts were produced for that matter. Again Rule 4(1) and (2) of the 3rd schedule to Court Rules refer. Without prejudice to the above, not the point of Mr. Chidowu, which, sincerely, I find was rightly presented, I agree that the bill 4 5 should be reasonably taxed. Assuming the Tshs. 2,268,308.45 were for instructions to defend appeal only, (though it is not shown one had relinquished the other items), yet the bill seems to be, exorbitant and on the high side. The gist's of Rule 9(2) of the 3rd schedule to the court rules are crystal clear, that the fee to be allowed by the Taxing Officer shall be that he considered reasonable, taking into account among others, the nature of appeal, impotancy and difficulty, the general conducts of the proceedings and so on. As put clearly by Mr. Chidowu it took then no time, they were through. Though he urged me to believe, the appeal was marked withdrawn, but very clearly on the record, it was rather dismissed by the court following such a preliminary objection raised by the other side. In other words matter went off in favour of Mr. Kashumbugu, right from the word "go". Not only be argued not the appeal much but also no intensive research and submissions were made. It was not so involving, as Mr. Kashumbugu wants me to believe. It would for me amount to overpayment and the decree holder should be blamed for negligent payment if not extravagancy (Rule 11 of the 3rd schedule to the Court Rules, 1979). Given mass global changes being geared, greatly, by socio- economic changes, Advocacy service should not be made available for only those economic advantaged. So as to lead the disadvantaged embarking on self styled dispute processing only be simple but not cheap; As I. fear few lawyers could be prepared to join the barr. In the event, I tax the bill, down to only Tshs. 1,000,000/-. DATED at DAR ES SALAAM this 27th day of August, 2004. I SM. ; MkANYIKA

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Prepared on 14 October 2026 · Esheria