

TANZANIA / JUDGMENT

LAND REFERENCE NO 03 OF 2023 clean

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB REGISTRY AT
ARUSHA LAND REFERENCE NO. 03 OF 2023 (C/fApplication No. 77 of2020, District Land and
Housing tribunal for Arusha at Arusha) CHARLES FANUEL
MBOSE..... APPLICANT VERSUS GETRUDE SADIKI
MOLLEL..... RESPONDENT

RULING

17h Dec 2024 & 14th Feb 2025 Masara, J This Application was brought under Order 7(1) & (2) of the Advocates Remuneration Order 2015 and section 49(3) of the Advocate Act, Cap. 341 [R.E. 2019], The Application is supported with the affidavit deponed by the Applicant. The Respondent contested the Application by filing a counter affidavit. Facts culminating to this Application can be summed as follows: the Respondent successfully sued the Applicant before Malula Ward Tribunal in Application No. 6 of 2020. The Applicant, aggrieved by the decision, and since he was time barred, preferred an application for extension of time before the District Land and Housing Tribunal for Arusha at Arusha (DLHT) in Application No. 77 of 2020. The matter proceeded ex parte due 1 | Pa ge to the failure of the Respondent to file her submissions opposing the Application. The DLHT granted the prayer for extension of time and further ordered that the Respondent pays costs. Pursuant to the order granting costs of the said application, the Applicant instituted an application for bill of costs before the DLHT claiming a total of TZS 2,676,000/=. In its ruling, the DLHT held that the application for Bill of Costs was filed outside the time prescribed by the law, hence it dismissed the same with no order as to costs. This determination of time limitation was made suo motto. Displeased with the said decision, the Applicant preferred the current Application urging the Court to assess the validity of the said decision and make an appropriate order. Before this Court, the Applicant was represented by Mr Elidaima Mbose, learned advocate, while the Respondent was dully represented by Ms Ekaeli Michael, a pro bonohfruxate from TAWLA. In support of the Application, Mr Mbose submitted that it was wrong for the DLHT to hold that the Bill of Costs was filed out of time without considering the number of days required to get copies of the ruling. Secondly, that the Applicant was not accorded the right to be heard. To substantiate his claims, Counsel argued that Order 4 of the Advocates Remuneration Order, GN No. 264 of 2015 which was cited by the chairman 2 | P a ge to deny costs requires the decree holder to file Bill of Costs within 60 days from the date costs were awarded. That, it presupposes that on the day of judgment or ruling, the decree holder is issued

with copies of the judgment or ruling and order. This, however, is not always the case as it happened in the instant case, he said. That, as per the records, the ruling was delivered on 1/7/2022 whereby on the same date the Applicant, via a letter, requested for the copy of the said ruling. That, the certified copy of the said ruling was issued to the Applicant on 27/7/2022, which, he argues, should be the reckoning date. To cement on this point, Counsel for the Applicant relied on the decisions of *Alex Senkoro and 3 Others vs Eliambutu Lyimo*, Civil Appeal No. 16 of 2017 and *DPP vs Opotuna Veran Njau and Another*, Criminal Appeal No. 45 of 2021, where the Court emphasised that computation of time should exclude days necessary for obtaining copies of judgment, decree or order. Thus, according to Counsel, the period from 1/7/2022 to 27/07/2022 when certified copies were served to the Applicant ought to be excluded from computation for the purpose of limitation. Thus, counting from 27/7/2022 to 30/08/2022 when the Bill of costs was filed, the 60 days had not expired, he urged.

3 | Page Mr Mbise further submitted that Order 4 of the Advocates Remuneration Order is in conflict with section 19 of the Law of Limitation Act regarding computation of time. In his view, the Law of Limitations Act takes precedence as it is the law that guide time limitation and it is an Act of Parliament, while the latter is a subsidiary legislation which should not depart from an Act of Parliament on computation of time. Regarding violation of the right to be heard, Mr Mbise stated that both the Applicant and the Respondent were not accorded the right to be heard on the issue relied on by the DLHT, as the taxing master suo motto raised the issue of time limitation while composing the ruling. Counsel made reference to the case of *M/s Flycatcher Safaris Ltd vs Hon Minister for Lands and Human Development and Another*, Civil Appeal No. 142 of 2017. That, since the taxing master failed to accord parties the right to be heard, the ultimate decision and order made suo motto is vitiated. Mr Mbise thus prayed that the ruling of the trial tribunal be declared as a nullity and the ruling for the bill of costs be prepared and delivered to parties with costs. On the contrary, Ms Michael, while contesting the Application, submitted that the Applicant's bill of costs was not filed within time, in the sense 4 | Page that, the bill of costs has to be filed within 60 days from the date of the ruling, as per para 4 of the Advocate Remuneration Order. That, since the Applicant filed the bill of costs on 30/08/2022, then he was out of time and the Applicant ought to have craved for extension of time. Ms Michael added that, since there is a specific governing law then section 19 of the Law of Limitation Act is inapplicable. Responding to the issue of costs, Ms Michael contended that the Respondent has throughout been represented on legal aid basis, as per section 31(1) of the Legal Aid Act which exempts people so represented from being condemned to pay costs. She added that, since the Respondent was under legal aid, she was to be exempted from paying costs. Regarding the claim that the parties were not accorded the right to be heard, she responded that the same is misconceived as both parties were given an opportunity to file their written submissions and the Respondent raised the issue of time limitation. Hence, according to Counsel, the right to be heard was availed to both parties. She prays that the Application be dismissed with no order as to costs. In his rejoinder submissions, Mr Mbise stated that, even in the current Application, the Applicant is not aware that the Respondent is represented 5 | Page by TAWLA under Legal Aid scheme. That in the trial tribunal the Respondent appeared in person with no any legal representation. He added that, it is true that the matter proceeded by way of written submissions, but the issue of time limitation was not

raised by any of the parties as it was raised suo motto, a fact that the Respondent confirmed in her counter affidavit. I have carefully considered the Affidavits both in support and against the Reference and the rival submissions from both parties. The issue for determination is whether or not the impugned decision of the taxing master ought to be varied by this Court for being incorrect. Before embarking on the issue, I will first address the issue regarding the Respondent being under legal aid scheme, hence not liable to pay costs as submitted by the Respondents Counsel. Ms Michael urged this Court to dismiss this Application owing to the fact that the Respondent was under legal aid scheme at the DLHT, hence could not and cannot be condemned to pay costs. It is true that the Respondent while filing her counter affidavit, also attached a certificate verifying that she was under legal aid and assisted by TAWLA. Ordinarily, she was not supposed to be condemned to pay costs unless circumstances explained in the law existed. Unfortunately, the Respondent did not challenge the 6 | Page Order of costs issued by the DLHT. Obviously, she could not have done so before the Taxing master. It is common ground that an executing court cannot go beyond the decree or order presented before it. Its duty is to give effect to that decree or order. In sum, the role of an executing court is to put into effect the decision made in the case and consequently deal with the orders and decrees as decided by the court. The executing court cannot vary or go behind the decree it is mandated to execute. Any concerns against the orders issued ought to be referred to the trial court or tribunal or appellate court which made the disputed orders. This position was made by this Court in the case of *Fortunata Edgs Kaungua vs George Hassan Kambulu* (Misc.Civil Application No. 71 of 2019 [2020] TZHC 2069 Tanzlii. With that in mind, the issue that the Respondent was under legal aid hence exempted from paying costs of the suit, genuine and germane as it may be, cannot be dealt with at this stage. That contestation was not within the mandate of the executing court and cannot be extended to this Court sitting in Reference of the decision of the executing court. I cannot portend to exercise powers beyond which the executing court had while dealing with the impugned decision herein. I thus do not agree with the 7 | Page invitation made to override the Taxing Master's decision on the basis that the Respondent, who was under legal aid scheme, should not have been condemned to pay costs in the first place. Having so held, I now revert to consider the merits of the Applicant's Application. One of the fundamental contestations of the taxing master's decision is that the DLHT raised and determined the issue of time limitation without according parties the right to be heard. The records of the DLHT, sitting as an executing court, reveal that the application for the bill of costs proceeded by way of filing written submissions. Before me, Counsel for the Respondent stated that the issue of time limitation was raised in the Respondent's submissions and thus the Applicant was accorded an opportunity to be heard. This statement is untrue. Neither of the parties raised the issue of time limitation for the filed bill of costs. Rather, the DLHT raised and adjudicated the same during its decision. The question is, did the conduct of the DLHT amount to denial of the right to be heard? The right of a party to be heard before an adverse action or decision is taken against such a party cannot be overemphasised. The right is so fundamental to the extent that a decision which is arrived at in its violation is a nullity. The Court of Appeal in its decision in the case of *Director of 8 | Page Public Prosecutions vs Emmanuel Fula*, Criminal Appeal No. 387 of 2019 [2024] TZCA 424 Tanzlii had this to say: "In resolving the issue on denial of the right to be heard, we directed our minds to

the minimum standards for fair trial as discussed in *Mfaume s/o Daudi Mpoto & Others v. Republic* [2023] TZCA 17568 [31 August 2023] and; *Kabula d/o Luhende v. Republic*, Criminal Appeal No. 281 of 2014 [unreported] and recapitulated the law that, any court, tribunal or authority having power to affect the rights, interests or privileges or legitimate expectations of a person is bound to hear that person before exercising its power. (Emphasis added) It is apparent from the records that both parties were not accorded the opportunity to address the issue of limitation which the taxing master relied on to dismiss the entire Bill of Costs. Having regard to the circumstance of this case and, particularly, the shortcomings discussed above, this Court is of the view that there was a denial of the right to be heard to the parties. Hence, the resulting proceedings and ruling issued by the DLHT are nothing but a nullity. The decision is hereby quashed and set aside. The conclusion made above suffices to dispose of the Application; however, for avoidance of doubts, I feel obliged to decide on the issue whether the Bill of Costs filed before the DLHT was time barred or not. 9 | Page An application for Bill of Costs has to be filed within 60 days as per Order 4 of the Advocates Remuneration Order, GN No. 263 of 2015, Counsel for the Applicant submitted that a certified copy of the Ruling was certified on 27/7/2022 thus the dates from 01/07/2022 to 27/07/2022 ought to be excluded from computation of time since they were dates necessary to obtain a copy of the impugned order. That, counting from 21/07 to 30/08 when the Bill of Costs was filed then the Application was well within time. On the other hand, Counsel for the Respondent countered that the Application was time barred as the ruling was delivered on 01/07/2022 and thus, since the Bill of costs was filed on 30/08/2022, the application was time barred. In determining this issue, I will be guided by the available submissions by the parties before this Court. It is not disputed that the impugned ruling was pronounced on 01/07/2022, certified on 27/07/2022 and the bill of costs was filed by the Applicant on 30/08/2022. While I agree with the submission made by the Counsel for the Applicant that the time spent to obtain copies of judgment, decree or order needs to be excluded from time computation, the Applicant is duty bound to indicate that those days were in fact spent in collecting and obtaining the said copies. It is not sufficient to only allege that the said ruling was not issued on the date of ruling. Contrary to what was submitted by Counsel or the Respondent, the Law of Limitation Act is relevant when it comes to computation of time limitation as it covers a variety of issues including the reckoning of time. This Court, in *Joseph Ngereja Mchunga vs Equity for Tanzania Limited*, Civil Reference No. 9 of 2020 arising from the Ruling of Taxation Officer in Taxation Civil Case No. 76 of 2019, Kakolaki J, held that: "The law under section 19(2) and (3) of Law of Limitation Act, [Cap. 89 R.E 2019] (LLA) provides automatic exclusion of the period of time spent for obtaining a copy of judgment/ruling or decree or order sought to be impugned. " This was also the position of the Court of Appeal in *Alex Senkoro and 3 others vs Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo, Deceased)*, Civil Appeal No. 16 of 2017 where it was held: 'We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time. [Emphasis mine] 11 | Page Based on the above, I agree with Counsel for the Applicant that the period spent in obtaining copies of ruling was to be excluded while computing the 60 days.

That said, however, the record reveals that on the same date, that is 01/07/2022, when the Ruling was pronounced, Counsel for the Applicant wrote a letter requesting for the copy of the ruling and order. But there is no evidence that fees were paid so as to obtain the said copies. The only copy on record is a receipt No. 991176040681 dated 02/08/2022 which was paid in respect of ruling in Misc. Application No. 304 of 2021. Thus, despite the timely request of the supply of the copies of decision by Counsel for the Applicant, fees were not paid for them to be issued with the said decision. Furthermore, the certification date on the impugned decision only verifies that the decision was certified and not the date that it was issued to the Applicant. It is common knowledge that payment of fees is mandatory before obtaining copies of the requested documents. Since there is no proof of payment of fees, then the date of the pronouncement of the ruling remains to be the valid date of issuance of the said order to the parties. Thus, despite the erroneous action of the taxing master of not availing parties the opportunity to address him on time limitation, the prevailing circumstances and the available records prove that the Bill of 12 | P a g e Costs was filed out of time. In the exercise of the powers of revision granted to me by Section 43(l)(b) of the Land Disputes Court Act Cap. 216 [R.E 2019], I hereby validate the decision made by the DLHTZ having satisfied myself that the Bill of Costs were not filed within the 60 days sanctioned by the law. In the upshot and considering the fact that the Application was not timely filed before the DLHT, the Reference herein is dismissed with no order as to costs since the Respondent is under Legal aid. DATED and DELIVERED at ARUSHA this 14th day of February 2025. Y.B. Masara JUDGE 13 | P a g e

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