

DECIDED
5 July 2013

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- GODFREY M. MAKORI APP.ELLANT, !!! VERSUS

1. HIS EXCELLENCY THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA

2. THE ATTORNEY GENERAL OF THE RESPONDENTS GOVERNMENT OF THE
UNITED REPUBLIC OF TANZANIA

... HISTORIC BACK GROUND . The Appellant/Decree Holder GODFREY M. MAKORI, was up July 2002, employed with the Ministry of Education and Culture in the capacity of accountant grade I. His service were terminated on disciplinary grounds, with effect from 1st July 2002, by the Permanent Secretary of the Ministry of Education. The termination was based on a finding of the committee of Inquiry which was formed by Respondent & secretary. He unsuccessfully appealed to the civil service commission. His Appeal to his Excellency the president of the United Republic of Tanzania was also unsuccessful. The President confirmed his dismissal from employment. Undeterred, he applied for prerogative writs of certiorari and mandamus in the High Court. A part from observing that the president by slip of pen confirmed the dismissal of the applicant/appellant instead of confirming his termination the High Court dismissed the appellant's application for the writs of certiorari and mandamus. Aggrieved by the decision of the High Court, the appellant appealed to the Court

of Appeal. The court of Appeal allowed the appeal with costs, including the costs incurred by the Appellant, to the High Court. Arguing in this support of bill of costs, the learned Advocate for Appellant Mr. Kahendaguza, categorized his bill of cost into three main parts, namely, instruction fees, costs for attendances and Disbursement. The first item which is the claim of Tshs. 18,340,000/= as instruction fees, for appeal and take the conduct of the appeal, on 25/6/2008, on this the learned counsel argued that, the Rules did not show them to any fixed figure be the amount of the fees to be recovered. He referred to Rule 9 (2) of the 3rd schedule of the court of Appeal Rules 1 2009 which gives facts on how much to award. He further argued that this case, was one it involves 8 grounds of appeal submitted on, by the appellant, which also required compact argument. He narrated that, the list of authorities, which were copied and supplied to the court, and to the parties should be put to consideration, as among the authorities supplied to the court and to the parties, were long been repealed, like the Civil Service Regulation of 1970 and some of them took them to read common Law texts Books including De' Smith Constitutional Law

1981. Mr. Kahendaguza further argued that the court should take into account the work done by the appellant in his appeal to the court of Appeal. He contended that the work done by the appellant pursued the court of Appeal to quash the decision of permanent Secretary of Civil Service Commission, and his Excellency the President of the United Republic of Tanzania and even of the High Court. He further submitted that his submission has 18 printed pages, thus, the court should put into account the substance and bulk of his submission on taxing the bill of costs. In respect of costs for drawing and preparation of different documents as per item 2,4,5,6,7 and 8 of the bill of costs Mr. Kahendaguza early, submitted that the total amount of Tshs. 348,000/= are in the line with the costs, under the third schedule of the Tanzania Court of Appeal Rules 2009, consequently are reasonable. Hence he prayed that the total amount of Tshs. 18,340,000/= be taxed accordingly as claimed under part 'if' of the bill of costs. On this Mr. Mboya counsel for the 1st and 2nd Respondents vigorously contested the appellant/Decree holder's claim in this part, for the reasons that, the amount claimed is too high; very unreasonable and huge, in comparison with the notice of the appeal. He advanced that, as the matter before the Court of Appeal related to an employment, and that the applicant was a civil servant dismissed from employment, there is no where in the claim would justify the huge account of money which related to employment. The learned counsel added that the appeal was simple and wasn't difficult, as the among 8 grounds of appeal filed by the appellant, none of them was difficult, could make the court not to decide the matter. He contended, that is why in item 16 the court took a short time to hear the matter. In relation with the authorities cited and submitted by the appellant on his appeal, Mr. Mboya, submitted that, the authorities brought to carry the appeal were

neither difficult to find and not difficult to understand. He submitted that the decision of the coast was_ that, the . - appellant go back to the Respondent to find whether be reinstated or not. ... The learned _counsel for :Respondents urged the court to consider the -interest. ..." of. the both parties -in the assessment of the costs, that the Resoondent •is. government, and the removal of the appellant from the I , • .., 5 I I) ' I ' " ! .. ,) .. t ; , ~ ~ - ' • .. , If - , ' " ! j I : 1 I I) , f I , ! ! , l . ! • I ~ ~ ! ~ ~ , j ; - I ~ " , 1 , , , 1 1 , . , ~ : ~ • I J ~ ~ - , ' ~ 4 , , , , ' " ~ " .. ii . J ! ; ! ! l ; f l ' ' : ' • t 1 1 , i) 1 . • P L i b l i c Service was made in good faith and not in malice. The counsel on this, he referred the court to the case of GEORGE MBUGUZI AND ANOTHER VR. MASIKINI (1980) TLR 53. Coming to item 3 of part "A" the counsel for the Respondent submitted that Tshs. 60,000 / = being the other arising 1costs, were nqt l , I proved as required by Law. In total he concluded that Tshs. 18,340,000/ = as claimed is extremely high in terms of Rule 124 (1) of the Court of Appeal Rules 2009. On that, Mr. Kahendaguza learned counsel for appellant Holder Submitted that, Justices of Appeal findings in the judgment found that, it was not necessary to deal with all grounds of Appeal filed by the Appellant, but the thought just relying on only 2 grounds, Wrould, • make • fair justice/decision. He submitted that, all these were done after the appellant's counsel argued the all grounds of Appeal. He further argued that the work done cannot be measured by length of judgment, but the complexity, length, quality, time and weight of authorities in the appellant's submission. 6 .. I In respect of Part "B" which comprises with item 9-17, the counsel submitted that item 9, 10, 11, 12, 13, 15 and 17 which is attendances, were not proved at all, because the appellant did not tender any document, to prove that he has incurred any costs for atten<;ling t.he court. • ! (. ' I . Regarding item 16, the counsel for Respondents submitted that the appellant failed to prove of the said 2 extra hours he spent in court, for hearing of appeal as consequence, he implored the court not to consider the amount claimed, for want of prove. Responding on what has been submitted by the counsel for Respondents, the counsel for the Appellant/ Decree holder Mr. l . Kahendaguza submitted that, the rates indicated in item 9, :10, 11, 12, .13! and 15 are stated straight under the scale of costs in the third schedule of .the Court of Appeal Rules 2009, and that, Rule 124 •(2) of the Rule makes mandatory for the Taxing Master to tax the matter accordingly. to the scales and rules. 7 0 . l l ' i • . j u , J , .. In connection to the time spent in coDrt, ML Kahendaguza stated that, the counsel' for the respondents was served with the certificate of Folio on 18/6/2012. That, if he could have find anything wrong, he could have filed nay affidavit to object what have been stated in the certificate of Folio. He further submitted that the matter of time, could have been i . ' resolved administratively by Registrar. That, it was th~ duty of the . respondent's _counsel to seek explanation from the Registrar to the time spent in court. Therefore he urged the court to tax item 16 which is Tshs. 110,000/= as it has been represented, and iten, 9-16 as it has been represented. Regarding Part C which is item 18-22, the counsel for the Respondent submitted that the appellant failed to prove the disbursement, amount of Tshs. 39,000/ = as it has being presented by .the appellant, i ' I because he did .not prove that, the payment were made through Exchequer receipts. He submitted that since the said payment were effected to the government, would have been proved through exchequer receipts. 8 .. . \ ' ; , , , , : ~ " • , ~ ~ ~ ~ , , r On that, Mr. Kahendaguza replied that, the receipt regarding the

payment were attached to the bill of costs, also the originals, were presented before the court at Taxation. To him, the amount of Tshs. 39,000/= is reasonable and he urged be taxed as presented. ' ' I I Regarding item 8, where Tshs. 5,000/ = is a claim for drawing letter for copies of judgment, ETC to Appeal, the counsel for Respondents . . submitted that, as the alleged drawn letter wasn't brought to court, and there was no any explanation to the court, he prayed that item not be considered. Responding to Mr. Mboya's objection regarding item 8, Mr. _ Kahendaguza maintained that there was no need the alleged letter to be attached to the bill of costs, as the drawer of the Rules assumed that the court would be having the all materials or necessary Qocur,ents related to the case, and that is why the Rules does not require and compel the 1 . attachment of everything to the bill of costs. In condusion,. he submitted that item 8 the claim of Tshs. 5,000/ = should be ta_xed accordingly . . ' .. •,,,. 9 ' .-.,,.) ., ~ . Now after hearing the submissions of the both counsels in relation •A J• with instru,ction fees, I find the imperative issue to be determined here, is whether the amount. of Tshs. 18,340,000/ = being charged is fair and reasonable. The law under Rule 9 (1) (2) of the Third Sch.edule to t~e Tanzania Court of Appeal Rules 2009 gives guideline on what to be taxed as an instruction fees. The Rule States inter-alia:- 9 (1) "The fees to be allowed for instruction to make, support as oppose any application should be such on the Taxing officer shall ~consider reasonable but shall not be less than Tshs. 100 / =." ,. ! 9 (2) "The fee be allowed for instructions to appeal as to oppose an appeal shall be such as the Taxing Officer shall. consider reasor:iable, having record to the. amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings the fund or person to bear the costs and all other relevant circumstances." 10 I I f ! :..... '1c~f ' ~ J J i) t \,I Again in this, in approaching the question of instruction fees I' am guided by among other things of what stated in the case of PREMCHAND RAICHAND QUARRY SERVICE OF EA LTD [1972] 162, where it was stated that:- I i ' ~ successful litigant should be fairly reimbursed the costs he has incurred, the Taxing officer owes it to public to ensure that the costs do not raise above a reasonable, Level as to deny the poor access to court. The level of remuneration must be as to attract new recruits to the profession." Now, after gone through the court record in Civil Appeal No. 67. of 2008, and gone through the all documents, including a.ppellants submission in the said appeal, I find the work done by the appellant was solid and it was not easy. The ~ppellant's submission encompassed 18 printed pages, which supported. by reported and unreported authorities and text books. In the at~ia have considered also the time spent in court by the appellant's 11 ;• I i ' •1 I ' . ' L counsel arguing a total of 8 grounds of appeal, I have further put into account the arguments by the appellant which persuaded the court of Appeal to quash the ~decisions of Permanent Secretary Qf Civil Servic~ , , I I

- . • . I .. : I Commis.sion, the decision of Excellence President of United Republic and of . the High Court. I have also considered the award of costs by the Court of Appeal to the appellant, that he be paid the cost incurred to the both courts to wit; the costs he incurred to the High Court and Court of Appeal. With all • the above in my mind, I am therefore find my self- constrained to agree with the learned counsel for the Appellant/Decree holder's claim

about instruction fees, and I am convincep that a fairly amount of time energy and Industry were spent by the appellant in prosecution of the appeal, however the amount of Tshs. 18,340,000/ = claimed is certainly not commensurate with all that effort. IN EAST AFRICA DEVELOPMENT BANK Vs. BLUE LINE ENTERPRISES LTD, Civil Reference No. 12 of 2006, the Court of Appeal observed that, at page 8 :-

"I find that the appellant's claim for costs is not excessive. The court has to consider the complexity of the case, the amount of work done by the appellant, and the amount of time and energy expended. In this case, the appellant has shown that it has expended a considerable amount of time and energy in prosecuting the appeal. The court is satisfied that the sum of Tshs. 10,340,000/ = is reasonable and justifiable under the circumstances. Therefore the first item is taxed accordingly and the rest is taxed off. Item 2, 4, 5, 7 and 8 which is for filing Notice of Appeal Tsh. 20,000/ = Tsh. 15,000/ = for drawing Notice of Appeal, Tsh. 120,000/ = for drawing memorandum of Appeal, Tsh. 110,000/ = for drawing bill of costs and Tsh. 5,000 / = for drawing letter for copies of judgment and Appeal, are collectively taxed accordingly. per Rule 124

- (2) and item 4, 5, 6, 7 and 8 of the scale of Costs of Rules. 13. Regarding item 3 the claim of Tsh. 60,000/ = so far as other arising costs are concerned they are taxed off for want of proof. As to item 4, 5, 6, 7 and 8, the claim of Tsh. 110,000/ = amount claimed being for 2 hours extra hours alleged spent by the Appellant in court during the hearing of Appeal, for the reasons that; there were no proof of, to the hours spent, as stated earlier, the Appellant's submission contained 18 printed pages. The counsel for Appellant also argued a total of all 8 grounds of appeal in court. After going through the court record, I find the record was bulky for the document filed by the appellant including written submission. For that reasons above I quite agree with Mr. Kahendaguza Counsel for the appellant that on the mentioned dates of the hearing of the appeal, it was a Law day, and normally the court business assume, after the ceremony being conducted. It is my opinion that the 2 hours extra time were spent. Therefore, item 16, claim of Tsh. 110,000/ = is taxed accordingly. In its final analysis, this bill of costs is taxed at Tsh. 10,509,000/ = and the rest is taxed off. It is so ordered. DATED at DAR ES SALAAM this 5th day of July, 2013. P. W. Bampikya TAXING MASTER COURT OF APPEAL 15

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