

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL REVIEW NO. 07 OF 2020

SILAS LUCAS ISANGI.....APPLICANT

Versus

NATIONL BANK OF COMMERCE LTD.....RESPONDENT

Last Order: 10th Sept, 2020

Date of Ruling: 17th Nov, 2020

RULING

FIKIRINI, J.

Aggrieved by the ruling and order in Reference No.3 of 2019 dated 30th June, 2020, the applicant, Silas Lucas Isangi preferred this review under section 78 (1) and Order XLII Rule 1 and section 95 of the Civil Procedure Code, Cap. 33 R.E. 2019 (the CPC). In his application the applicant has raised three issues:

1. That this Honourable Court erred in holding that the respondent's application for reference has merit and proceed to quash the decision and set aside the orders of the Deputy Registrar without directing the parties to a legal remedy.
2. That this Honourable Court erred in law when it quashed the proceedings instead of taxing the Bill of Costs on Reference and order as to what costs the applicant/respondent is entitled.

3. That the Court's decision is vague as to what costs the respondent is entitled to.

The application was disposed of by way of written submissions, timely filed. The submissions, though are not reproduced wholly in this ruling, but certainly has been considered in course of the ruling to be delivered.

In responding to the application I will examine all the three issues together. In principle a review can be made pursuant to Order XLII Rule 1 (b) of the CPC, where the grounds for the review is either of the following: (i) when there is discovery of new and important matter of evidence, (ii) once there is a mistake or an error apparent on the face of the record and (iii) for any other sufficient reason.

The case of **Boniface Sigaye & 72 Other v Tanzania Revenue Authority, Civil Appeal No. 185 of 2002** (unreported) though it is a High Court decision which is not binding upon this Court but the application of the principle have been well elucidated. Other cases in which the principles have been illustrated as submitted by Mr. Eric Kamala for the applicant are **Bulyankulu Gold Mine Limited & 2 Others v Isa Limited & Another, Miscellaneous Commercial Review No. 01 of 2018 (unreported)**, in which the cases of **East African Development Bank v Blueline Enterprises Tanzania Ltd, Civil Application No. 47 of 2010** and **Chandrakant Joshubhai Patel V R [2004] T. L. R. 218** were cited with approval,

and in which the reasoning by **Mulla 14th Edition P. 2335-36** was adopted. In which reasons or ground calling for review have been well illustrated.

Dr. Onesmo Kyauke who filed submission on behalf of the respondent blew both hot and cold. On one hand, he conceded that the Court could have put it clearer the amount the applicant was entitled, on the other he contested the application for failing to tell exactly what was to be reviewed and the amount the applicant was entitled. I am at one with Mr. Kamala that failure to disclose the remedies while the costs of the said bill was not contested was an error which any person can notice without established arguments or contest thereto. Likewise, failure to give remedy the applicant was entitled to was an error as the Court was supposed to either increase or decrease the taxed amount or order a re-trial if the order was considered unfair. According to the ruling and particularly in page 4, the Taxing Master agreed to items nos. 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 23, 24, 25, 26, 28, 29, 30 and 31, which were reduced into three lots part B and C. Adding the figures on taxed items, what I get is Tzs. 71,500,000/= for Part B and Tzs. 219,535, 100/= for Part C. Putting the three together that is, Part A – Tzs. 3,585,500 /= + Part B - Tzs. 71, 500,000/= + Part C-Tzs. 219, 535,100, the total I get is Tzs. 294, 620, 600/= . I have reviewed the figures put forward by Dr. Onesmo which totaled to Tzs. 23, 000,000/= which

aside from not understanding on how he arrived at the figures, but find them far below from the amount in the itemized items.

After failing to deduce how the Taxing Master came up with the figure of Tzs. 595, 869, 200/= from the items taxed as listed above, the Court had an option to either come up with the amount considered justified or order retrial. Failing to do that is undoubtedly an error apparent on the face of the record, the fact I do not dispute.

This application, without any doubt deserved review of the Court's decision, which I proceed to do, by reviewing the order dated 30th June, 2020, which allowed the application as being with merits, and proceeded to quash the decision and set aside the order with costs. The application is still with merits but instead of quashing the decision, I only set aside Bill of Costs awarded at Tzs. 595, 869,200/= which was taxed and order taxed Bill of Costs of Tzs. 294, 620, 600/=.

This application for review is thus allowed with costs and the taxed Bill of Costs is awarded at Tzs. 294, 620, 600/=. It is so ordered.



P. S. FIKIRINI

JUDGE

17th NOVEMBER, 2020