

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 12 OF 1996

(TAXATION)

BETWEEN

M. W. NYAKANGARA APPLICANT

AND

ATTORNEY GENERAL RESPONDENT

R U L I N G

SHANGALI, DR-CA/TAXING OFFICER:

On 27th August 1996 the Court of Appeal (Before a single) announced its decision in Civil application No. 12 of 1996 in which the applicant was Attorney General and respondent was Mr. M.W. Nyakangara. In the said Civil application the Attorney General was applying for extension of time to file an appeal out of time under rule 8 of the Court of Appeal rules. The application was dismissed with costs in favour of the respondent.

Thereafter the respondent Mr. M.W. Nyakangara who is now the applicant and represented by the learned Counsel Mr. Nyanduga filed a bill of costs amounting to Shs.1,488,740.00. In the hearing of this taxation the respondent, Attorney General was represented by Mrs. Macha, Senior State Attorney.

From the beginning Mr. Nyanduga, Counsel for the applicant was candid enough to state that the applicant Mr. Nyakangara reside in Dodoma and therefore most of the issues and preparation in the Civil application No. 12 of 1996 were done by him i.e. Mr. Nyakangara himself, and that the Counsel was engaged immediately before the hearing date. This version is also reflected in the ruling of the Court at page 2

of the ruling which says:

"The respondent actually filed two objections, the first one on 25th April 1996 and the second file on 27th May 1996, both without the guidance of Counsel. At the hearing Mr. Nyanduga decided to abandon the earlier objection and relied on the letter one only..."

In his submission to support his claims in the bill of costs Mr. Nyanduga merely recapitulated what was in the bill and failed to produce any evidence, any receipts, or any documents to support his claims. The only fact is that the applicant resides in Dodoma. The question is whether that fact is enough for me or any other taxing officer to award any claims on transport and travelling, accommodation, meals and breakfast without any evidence to support these claims.

Mrs. Macha for the respondent submitted that travelling expenses, taxis fare, hotel charges must all be supported by the receipts. The learned Counsel queried whether the respondent was staying at Mgulani Hostel "free of charge". If he was paying the money, then the receipts must be issued in accordance to the business transactions. Let me repeat what was said in Civil Appeal No. 10 of 1982 (taxation of Bill of Costs) "The receipts are issued to Customers in order to verify the transaction of services rendered between the parties and therefore non-production of the receipts means failure to prove the transaction of services (buyer and seller)". Mrs. Macha also wondered why items 2, 12, 14, 19, 23, 25, 30, 34, 36, 41, 46, 48, 53 and 56 are showing that the respondent was staying in the Hotel while in the submission he said he was staying at Mgulani Hostel. Although Mr. Nyanduga submitted that the issue whether the respondent was staying at Hotel or Hostel is a minor one, I do not share his view. Hotels and Hostels are different types of business in all spheres from the type of licences to the services. In order

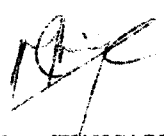
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to tax a bill of Costs judiciously every aspect and item must be clear and well supported by evidence or receipts. It is unwise and quite difficult for a taxing officer to determine costs arbitrary or by guessing. It is the duty of the decree holder to assist and convince the taxing officer by way of evidence and receipts in any bill of costs.

Having gone that far, I now tax this bill as following; Item 1 typing charges is taxed at shs.5,000/= only, items 2 to 7 are taxed at nil for lack of evidence/receipts; Item 8 is taxed at shs.200/= as presented; Item 9 is taxed at shs.2,000.00 only; Item 10 to 19 are taxed at nil for lack of receipts or evidence; Item 20 is taxed at 2,000.00 only; Item 21 to 23 are taxed at nil for lack of evidence/receipts; Item 24 is taxed at shs.5000.00 only; Items 25 to 30 are taxed at nil for lack of supporting evidence or receipts; Item 31 which include Shs.200/= filling fees is taxed at shs.2,200.00 only; Items 32 to 41 are taxed at nil for lack of receipts or evidence; Item 42, instruction to defend respondent is taxed at shs.150,000.00 only because it is evident that the Counsel was engaged at eleventh hour. Item 43 is taxed at shs.2,000.00 only; Items 44 to 53 are taxed at nil for lack of evidence or receipts; Item 54 is taxed at shs.2,000.00 only while Items 55 to 56 are taxed at nil for lack of receipts or evidence.

In the final analysis this bill of costs is taxed at shs.170,400.00 and taxed off shs.1,318,340.00.

DATED at DAR ES SALAAM this 14th day of March, 1997.


(M. S. SHANGALI)

TAXING OFFICER