

**IN TH HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 117 OF 1998

DARIUS RUTTA.....APPLICANT

VERSUS

FIBA LIMITED.....RESPONDENT

R U L I N G

As clearly indicated by learned Rutabingwa advocate for the plaintiff/Decree Holder in his written submissions, there are two bills of cost filed in the present case. One is against the Judgment Debtor, FIBA Ltd. and this was, according to court record, filed on 30th May, 2000. The second bill of costs is that against the objector Greenland Bank (T) Ltd. Filed on 2nd June, 2000.

The history behind the above events is that the plaintiff/Decree Holder filed a suit against the Judgment Debtor FIBA Ltd. And won the case with costs. The Decree Holder was claiming from the Judgment Debtor US Dollar 40,000/= as special damages, general damages, interest and costs.

I will, deal with the bill of costs separately as Learned Rutabingwa also argued them by way of written submissions separately.

I will start with bill of costs of the Decree Holder against the judgment Debtor FIBA Ltd.

The bill consists of 32 items and a total of TShs.6,270,875/= is claimed. In arguing the bill, which was done *ex parte* following non-appearance of judgment Debtor despite being duly served, the total amount claimed was varried to only TShs.4,202,125/=. The order that the bill be argued *ex parte* and by written submission was made by my brother F.S.K. Mutungi (then District Registrar) who was later transferred to Land Division of High Court before preparing the ruling. I had, therefore, to take over the matter from there.

Item No.1 concern instruction to sue and it is argued that, according to the submissions, the total sum awarded under judgment was US Dollar 150,000/= equivalent, then, to TShs.133,950,000/=. That 3% as per the taxation Rules [GN.515/91] is equal to TShs.4,018,500/= which is prayed by Decree Holder to be awarded as instruction fees.

With respect to Learned Rutabingwa for the Decree Holder, 3% scale fee under schedule IX to GN 515/91 is calculated from the amount claimed in the plaint. The plaint clearly show that the plaintiff/Decree Holder filed a suit against the Defendant/Judgment Debtor claiming US Dollar 40,000/= only. Basing on the exchange rate pertaining then, as per learned Rutabingwa himself, of TShs.893/= to one United States Dollar, US Dollar 40,000/= was equal to TShs.35,720,000/=. So 3% of TShs.35,720,000/= is equal to TShs.1,061,600/= which I award as instruction fees and tax off the rest.

I now turn to items No. 2 to 22 which concern attendance in Court. I have carefully considered them and I am satisfied that the claims are not only fair but on the lower side. I accordingly tax them all as presented. I also allow adding 50% on all items except item No.1

Items Numbers 24 to 32 concern disbursements. I have perused the record and I have satisfied my self that they are justified and I accordingly tax them as presented.

In total therefore the bill of costs on the Decree Holder (then plaintiff) against the Judgment Debtor (then Defendant) is taxed at TShs.1,291,475/= (Shillings One Million Two Ninety One Thousand Four Seventy Five) only.

Now the bill of Costs of the Decree Holder as against the objector – the Greenland Bank (T) Ltd.

As clearly indicated by learned Rutabingwa in his written submissions in support of the bill of costs, the Greenland Bank (T) Ltd filed objection proceedings challenging the attachment of property on plot No. 84 B Msasani Beach which objection was overruled with Costs by Chipeta, J. The record clearly shows that the objector filed an application which was resisted by learned Rutabingwa for the Decree Holder.

In the written submission in support of the bill of costs, learned Rutabingwa argues that the value of the property attached was TShs.240,000,000/= and that according to taxation rules the scale provided is

3% of the subject matter hence justifying a claim of TShs.7,200,000/= as instruction fees.

It be noted that the Advocates Remuneration and Taxation of Costs Rules (GN. 515/91) sets different scale fees for various works done by advocate. The 3% scale fee applies in cases where the claim is for contentious proceeding for liquidated sum where the claim is over 3 million. This is in accordance with schedule IX to the rules. It is does not apply to applications. Fees for application are provided for under schedule XI (d) to (j). Therein is clearly indicated that (in para 1 (j)) costs/fees for applications, notices of motion or chamber applications which is apposed is TShs.3,100/=. Objection proceedings are chamber applications. However the proviso to the above paragraph gives discretion to taxing officer over and above that provided under rule 11 to take into consideration the other fees and allowances to the advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances. Rule 11 gives power to taxing master to allow all such fees, costs which appear necessary notwithstanding anything contained in the rules.

I have perused the record, I have seen that much research and energy was involved by Learned Rutabingwa in the conduct of the objection proceedings, the amount (value of the property attached) was big (TShs.240,000,000/=). In the circumstances, using my discretionary powers

stated above, I award TShs.3,000,000/= (three million) as instruction fees and tax off the rest.

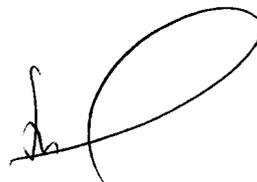
Now items No. 2 to 12. They concern attendance in Court (items No 2, 4, 6, 7, 9, 10, 11 and 12) and preparation of various documents (items No.3, 5, 8). The amounts claimed are reasonable, fair and according to scale. I accordingly tax them all as presented.

Item 13 is a new thing in the issues of taxation. Since no sufficient explanation is given, I tax it off.

Items No. 14 to 16 concern disbursements, the claims are well and properly substantiated by receipts contained in the Court record (case file). I accordingly tax them all as presented.

In total the bill between the Decree Holder and the objector Greenland Bank (T) Ltd. is taxed at TShs.3,083,500/= (Shillings three million eighty three thousand five hundred) only.

Ordered.



S. A. Lila, DR

TAXING MASTER

19/12/2003