

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA**

AT ARUSHA

CIVIL REFERENCE NO. 1 OF 2017

(Originating from Taxation Cause No. 79/2016)

JUMA IDDI.....APPLICANT

VERSUS

HAWA IDDI.....RESPONDENT

RULING

DR. M. OPIYO, J

The Applicant brought this application made under the provision of Order 7 (1) and (2) of the Advocates Remuneration Order, G.N No. 264 of 2015 and any other enabling provisions of the law, for the following orders;

1. That this Honourable Court be pleased to alter, change and varies the ruling of Taxation Cause No. 79/2016 dated 17th February, 2017 by reducing or dismiss the cost/fees awarded so as to confirm the fees prescribed in the orders.
2. Costs shall follow the event.

During the hearing of the application, both the applicant and the respondent appeared in person and unrepresented. When called for hearing, the applicant submitted that, he objected an application for taxation cause that the application was time barred. He further stated that, the respondent did not bring any supporting evidence to substantiate her claim for costs, but the same has been awarded out of no evidence at all. He further argued that, the applicant contended to have lost documents but she never reported to the police to get loss report to support her claim.

In rebuttal, the respondent submitted that all her documents were stolen in the bus and after she noticed that, her pressure went low so she had to proceed to the hospital not to police station as he suspected no one, so she saw no use of going to report at police station. She further argued that, it is the applicant who appealed to the High Court at Arusha after it was decided that the property was a family property. She therefore prayed for the court to order the respondent to pay costs as taxed. And consequently dismiss the appeal.

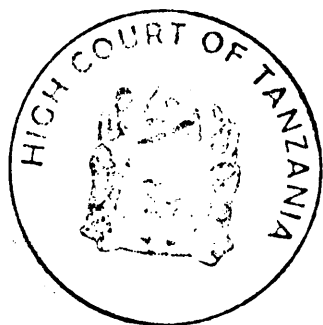
Having gone through the records, the same show that the respondent herein filed 'Taxation Cause No. 79/2016 claiming the amount of Tshs. 609,000/= as the costs she incurred in defending Misc. Application No. 147 of 2016 before the High Court and the taxing master granted Tshs. 557,000/= out of the amount claimed.

Starting with the applicant's argument that the application for taxation cause was time barred, the records show that an order awarding costs (Misc. Civil Application No. 145/2015) was delivered on 8th day of April, 2016 and an application for bill of costs was filed on 13th day of September, 2016. According to Rule 4 of the Advocates Remuneration Order, 2015 an application for taxation has to be lodged within 60 days from an order awarding costs. As such, it is true that the application for taxation cause that is filed after expiry of 60 days is time barred. However in this case, the respondent had applied for extension of time to file application for taxation cause out of time. She was granted 21 one day from 28th day of August 2016, the date of the order, within which to file taxation cause. She filed the same on 13th day of September, 2016, well within the time availed. In the circumstances, the objection finds no roots as the application was filed within 21 days she was availed with. The objection is therefore overruled.

Turning to the merit of application, the applicant claims that the respondent did not bring any supporting evidence to substantiate her claim for costs, but the same has been awarded out of no evidence at all. Going through the records, it is revealed that, indeed no documentary evidence was tendered to substantiate the respondent claim for costs. The taxing Master however concluded that, no suit is conducted without incidental costs, including filing fees, transport expenses, accommodation etc. I agree with him that, irrespective of

the absence of substantiating documents, but a successful litigant is entitled to reasonable and fair costs that they incurred in pursuing the matter in court. He calculated the days the respondent was in attendance in terms of fare, food and accommodation for each day and came to the total of 50,000/= per day. Provided the actual costs as estimated by the Taxing Master (fare from Babati return 14,000/ each meal 2,500/- and accommodation around 25,000/= per night times number of days the respondent attended in person) sounds very reasonable to me, I find no reasonable ground to interfere with the decision of the taxing master. All the costs awarded are incidental to the pursuing the matter. In the case of **Hader Bin Mohamed Elemandry and others v. Khadija Bint Ally (1956)23 EACA and haji issa v Rweitama Mutala (1972) HCD 173** set out principles to be considered by Taxing Officer when assessing Bill of costs, which in my view were well considered in this case.

Consequently, the application is dismissed for lack of merits and decision of the Taxing Master in Taxation Cause No. 79/2016 is upheld. I make no order as to costs.



A handwritten signature in dark ink, appearing to be "M. Opiyo", is written over a horizontal line.

DR. M. OPIYO

JUDGE

17/4/2018