

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

**AT SHINYANGA**

**CIVIL REFERENCE NO. 01 OF 2019**

*(Arising from Taxation case No 5 of 2018 S.P.Mwaiseje , Taxing Officer)*

**THE REGIONAL COMMISSIONER OF SHINYANGA..... APPLICANT  
VERSUS**

**BERNARD MSONGA SIZASIZA..... RESPONDENT**

**RULING**

*Date: 19/3/2020 & 8/5/2020*

**MKWIZU, J.:**

This Application is made under Order 7 (1) and (2) and Order 48 of the Advocates Remuneration Order, GN No. 264 of 2015 where the applicants request this court among other things to find the claim under the presented Bill of Costs in Taxation Case No 5 of 2018 arising from the Ruling in the Misc. Civil cause No. 09 of 2018 dated 31/07/2018 excessive and that the respondent are not entitled to any costs. The application was brought by a Chamber summons supported by the affidavit sworn by SOLOMOMN LUKOMBESO LWENGE Senior State Attorney.

To appreciate the essence of this application I find it appropriate to set out its relevant factual background. The respondents, had vide Misc. Civil Cause No 09 of 2018 through their counsel Paul Kaunda, applied for leave so that they can file an application for prerogative orders namely Certiorari, Declaration and Mandamus. The court granted the application with costs. Following this order, respondents presented a bill of costs via Taxation Cause No. 5 of 2018 with a total claim of 30,650,000/= being instruction fees and other costs incurred in attending the hearing and the ruling date.

As the records would reveal, the bill of costs was strongly resisted to by the applicants, at the end, the taxing officer awarded the bill to the tune of 720,000 only, the rest of the amount presented was taxed off. The applicants are not comfortable with the taxing officer's order. Their claim is premised under the provisions of Order 48 of the Advocates Remunerations Order GN No. 264 of 2015.

At the hearing of this application, the applicants were represented by Mr Solomon Lukombeso Lwenge learned Senior State Attorney while the respondents had the services of Mt Paul Kaunda, learned advocate.

Mr Lwenge submitted for the application, he said, they are challenging the decision dated 13/12/2018 where the Taxing Officer failed to order that respondents were not entitled to costs after having disallowed one-sixth of the costs claimed in the bill of costs as provided for under order 48 of GN No. 264 of 2015. Mr. Lwenge, cited the decision in Civil reference No. 72 of 2018 between **John Monose Cheyo and Stanbic Tanzania Ltd** and invited this court to reverse the decision of the Taxing Master and make an order that the respondents were not entitled to costs.

Responding to the application, Mr. Paulo Kaunda resisted the prayer, he said, the respondent's bill of costs was argued in a special premises as provided for under Order 15 of GN No 264 of 2015. He said, in order for the court to invoke the provisions of order 48, the Taxing Master ought to have ruled that the bill of costs is excessive which is not the case here. He advised this court to find that the Taxing Master's decision was rightly arrived at and thereafter, the application be dismissed.

Re-joining, the learned Senior State Attorney stated briefly that, the provisions of order 15 were considered during hearing of the taxation cause before the Taxing Master, the issue before the court now is in regards to the amount disallowed vis-à-vis the amount taxed. He urged the court to interpret the law correctly and give a correct decision.

Having considered the application at hand, and the parties rival submissions and The Advocates Remuneration Order, 2015 which is the main law that governs taxation of costs in the High Court and subordinate courts, this court is invited to look into the applicability of order 48 of the said Government Notice, in relation to the complained decision of the Taxing Master in Taxation cause no. 5 of 2018.

Order 48 provides: -

***48. When more than one-sixth of the total amount of a bill of costs exclusive of court fees is disallowed, the party presenting the bill for taxation shall not be entitled to the costs of such taxation:***

*Provided that, at the discretion of the taxing officer any instruction fee claimed, may be disregarded in, the computation of the amount taxed of that fee in the computation of the one-sixth. (Emphasis added).*

The provision is very specific and straight forward. As correctly submitted by Mr. Lwenge and agreed to by the counsel for the respondent, the provision above tends to restrict excessive bill of costs by party. On the other hand, Mr. Kaunda is claiming that the bill of cost whose decision is under scrutiny was presented and allowed under the provisions of order 15 of the same Government Notice hence the provision of order 48 is not applicable.

I traversed through Order 15. It provides: -

***15. An advocate shall in' business of exceptional importance or unusual complexity, be entitled to receive as against his client, a special fee in addition to the remuneration as prescribed in this Order. The taxing officer shall, in assessing the special fee, consider following-***

- (a) the nature of the place and the circumstances in which the business or part thereof is transacted ;*
- (b) the nature and extent of the pecuniary or other interest involved;*
- (c) the nature and quality of labour and responsibility entailed;*
- (d) the number, complexity and importance of documents prepared or examined; or*
- (e) any other relevant circumstances.*

Before the Taxing Master, Mr. Kaunda had presented special circumstances convincing the Taxing Master under order 15 above as to why the bill of costs should be taxed as presented. He said, applicants (now respondents) were duly elected leaders of Maganzo Village until when the respondents(applicants) nullified their posts. In taxing the bill, Taxing Master rejected the claim. At page 5 of the Taxing Master's decision, it was said:-

*"...the applicant's counsel tried to convince this court that the matter was special since the applicants were elected leaders. **I have not seen strong argument to convince this court***

***to tax the instrument fee at the tune filed before this court...*** ( *Emphasis added*).

It goes without saying therefore that, the Taxing Master 's decision was not based on the provisions of order 15 of GN NO. 264 of 2015 but rather the bill was taxed under the 11<sup>th</sup> schedule. This being the case therefore, the respondent's advocate claim that the bill was taxed under special circumstances fails.

Now, coming to the issue under consideration, as stated earlier in this decision, the applicants had presented a bill of costs totalling at 30,650,000/= out of which only 720,000 were taxed and the rest taxed off. The disallowed amount is obviously above one-sixth of the total claimed amount in the bill of cots. Having so taxed, the Taxing Master ought to have taken into account the provisions of order 48 above and declare that the respondent (who were the applicants then) are entitled to no costs as submitted by Mr Lwenge, learned Senior State Attorney. This was not done. In the case of John **Momose Cheyo** (Supra), the court was called upon to look into applicability of the order under scrutiny. Hon Songoro, J (as he then was) said at page 4 and 5 of his decision, I quote: -

*"...Taxing Master in exercising his power in taxation proceedings he was also bound by order 48 ...Since the taxing master failed to observe the statutory requisites envisaged in order 48 of the Advocate Remuneration Order of Government Notice No. 263 (sic) of 2015, I hereby quash and set aside the decision of the Taxing Master in the Misc. Commercial application No. 9 of 2017 which granted costs*


*Next, I hereby rule and decide that since in the respondent bill of costs, one -sixth of the claimed amount being Tsh 7,567,600/= was disallowed by hon taxing Master, I hereby find and decide that respondent is not entitled to the costs of such taxation..."*

I am persuaded by the above authority. Since in our case, the Taxing Master avoided the provisions of order 48, I am convinced that, the application by the applicants is justified. I hereby quash and set aside the Taxing Master's decision, allow the application and order that having disallowed above one-sixth of the claimed costs in the Taxation Cause No 5 of 2018, respondents were not entitled to costs.



Taking into account the general nature of this application I make no order as to costs. It is so ordered.

**Dated at Shinyanga** this 8<sup>th</sup> day of May, 2020



*E. Mkwizu*  
**E. Mkwizu**  
Judge  
8/5/2020

**Court:** Right of appeal explained.



*E. Mkwizu*  
**E. Mkwizu**  
Judge  
8/5/2020