

**IN THE HIGH COURT OF TANZANIA
(DAR-ES -SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL REFERENCE NO. 01 OF 2020**

NIC BANK TANZANIA LIMITED..... APPLICANT

VERSUS

BLUE FALCON TRANSPORT CO LTD.....1st RESPONDENT

SAID SEIF ZAHORO.....2nd RESPONDENT

JAMAL SEIF ZAHORO.....3rd RESPONDENT

(Arising from the decision of Taxing Officer,)

(Tiganga, Esq- DR.)

Dated 16th December 2019

in

Bill of cost No. 30 of 2018

RULING

17th March & 10th May 2021

Rwizile. J

This reference challenges the decision arising from the bill of costs as taxed by the taxing officer (Tiganga DR as he then was). The application is filed under order 7(1) and (2) of the Advocates Remuneration Orders 2015, GN 263 of 2015. It is clear that the court is asked to examine the ruling and its resultant orders to satisfy itself as to their correctness and legality of the same, and after doing so quash and set aside the same.

In actual fact, it would appear parties to this application had a Civil Case before this court. It was Civil Cause No. 153 of 2017. The same was terminated on preliminary stages, after determination of the point on preliminary objection. The applicant who lost was condemned to pay costs of the case. The respondents in claiming for their costs filed an application for such enforcement. The claim advanced was a total of 43,480,000/=. Categorized in instruction fee, the sum of 41,600,000/=: consultation fee, 100,000/= the remaining amount catered for court attendance fee and disbursements.

Upon hearing, the taxing officer awarded a total amount of 5,812,964/=. It was categorical that instruction fee was taxed at 3,992,966/=: 700,000/= for court attendance, 120,000/= disbursements and 1,000,000/= as costs for the bill of costs itself. The applicant however was not happy with the same. This reference therefore is challenging the same as being excessive. Mr. Shiza learned advocate appeared for the applicant, Mr. Said Zahoro 2nd respondent appeared in person and for the 1st respondent as its director.

The application was argued by written submissions and the same were pegged in attacking the amount awarded as instruction fees, 3,992,966/=: and 1,000,000/= for the bill of costs. Mr. Shiza advanced as the point of grievance that the same despite being excessive, and awarded out of scales, it was not proved by production of an EFD receipt. He submitted that, his point fetches support in the decisions of this court in the cases of **Professor Emmanuel A. Mjema vs Managing Director and 2 others**, Civil Reference No. 7 of 2017 and the case of **First Word Investment Brokers vs Buckreef Gold Company limited**, Commercial Case Reference No. 1 of 2019

On the other hand, the respondents were of the view that since the amount in the main suit was 199,648,200/=. It was argued, it was not right for the taxing officer to award 2%. Since the scale as per item 7 of the 9th Schedule to the Advocate Remuneration orders provide for more than that. It was submitted, for the amount of 150,000,000/= to 400,000,000/= the scales to apply ought to be 3% to 7%. It was insisted that, the amount taxed is below the minimum threshold set by the scales. For them, instruction fees is independent and a static item and is charged once, the stage of termination of the case notwithstanding, as per the case of **Joreth Ltd and Associates** (2002)1.E.A 92 (CAK).

It was further stated that taxation of costs is governed by the Advocates Remuneration orders, not the Tax Administration Act. As such, they fetched support in contending decisions of this court, that taxation of costs does not require production of an EFD receipt as proof of instruction fee. These decisions include **Salehe Habib Salehe vs Manjit Gurmush Singh and Mohinder Gurmush Singh**, Civil Reference No. 7 of 2019 and **Thinamy and Two others vs Dino Katsapas**, Misc. Commercial Case No. 86 of 2018.

When rejoining, Mr. Shiza was of the view that awarding the amount of 5,812, 964/= without proof is wildly unreasonable. With bitterness, he added, that advocates are VAT registered tax payers. They have, as matter of law, to provide an EFD receipt. According to his understanding, the taxing officer is not only bound to apply the Advocates Remuneration orders, but also other laws such as the Evidence Act (section 110) and Tax Administration Act 2015 (section 36(1)). With this, I was asked to quash the decision and set aside orders of the taxing officer.

Having gone through the submissions of the parties and cogitated them carefully, I have to say, I do not think this area of taxation of costs is a virgin land. One does not need to be inquisitive to know that. There have been long standing general principles governing taxation of costs. The same were propounded by Spry V-P, in the leading case of, **Premchand Raichand Ltd and Another vs Quarry Services of East Africa Ltd and Others** (No. 3) [1972] EA 162, at 163 to 165 as follows;

- i. That costs be not allowed to rise to such level as to confine access to courts to the wealthy;
- ii. A successful litigant ought to be fairly reimbursed for the costs he has had to incur;
- iii. That the general level of remuneration of advocates must be such as to attract recruits to the profession
- iv. That as far as practicable, there should be consistency in the awards made.
- v. That there is no mathematical formula to be used by the taxing master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances.
- vi. The taxing officer has discretion in the matter of taxation but he must exercise the discretion judicially, not whimsically.
- vii. The court will only interfere when the award of the taxing officer is so high or so low as to amount an injustice to one party.

The principles have been consistently applied by this court until recently, when its section, introduced in taxation of costs, production of EFD receipt as the proof of instruction fees, examples of cases, include, **Professor Emmanuel A. Mjema** and **First Word Investment Brokers** (supra), relied upon by the applicant to impeach the taxing officer's award.

But still some of the above principles have been enacted into law. Order 12 for instance, explicitly states as hereunder;

12.-(1) The taxing officer may allow such costs, charges and expenses as authorised in this Order or appear to him to be necessary or proper for the attainment of justice.

(2) The taxing officer shall not allow, any costs incurred or increased through over-caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons.

The law therefore enjoins the taxing officer to act with guided and reasonable discretion. He must therefore take into consideration, circumstances of the case with the primary aim of attaining justice. It follows therefore that if the taxing officer is in doubt of any costs claimed, may at his own discretion, demand for proof of the same, in compliance to order 58(1). The same states as follows;

58.-(1) Receipts or vouchers for all disbursements charged in a bill of costs (other than witness allowances and expenses supported by a statement signed by an advocate) shall be produced at taxation if required by the taxing officer.

In the matter at hand, the taxing officer applied the law under item 7 of the 9th Schedule to the Advocate Remuneration orders. This provides for scales through which the taxing officer should trail on. The record shows, as submitted, the amount awarded is below the percentage required, given the amount of claim involved in the main case, which is 199,648,200/=.

It is therefore clear, both in law and in practice that taxation of costs is an exercise of discretion of the taxing officer. The discretion backed by the law and not whimsically applied cannot be interfered with. Neither in law nor in practice, where it is required of the taxing officer to apply the law of Evidence Act to require proof of the actual costs incurred by the parties.

Therefore, the requirement of production of EFD receipt is neither here nor there. The decisions of this court requiring production of an EFD receipt, as proof of instruction fee, as relied upon by the applicant, that is, **Professor Emmanuel A. Mjema** and **First Word Investment Brokers** (supra), are not backed by any law and therefore cannot be followed. Above all, they have been overruled by the recent decision of the court of Appeal in the case of Tanzania **Rent A Car Limited vs Peter Kimuhu**, Civil Appeal No. 9 of 2020. The court remarked in simple terms that in taxation of the bill of costs, there is no need of proof of instruction fees by production of receipts, vouchers or remuneration agreement. The assigned reason is that the taxing officer is required to determine the costs incurred by application of scales provided by the law.

The claim of costs in the matter impugned was as shown, over 43,000,000/= . The amount less than 6,000,000/= was taxed and yet the applicant is still at loggerheads with it.

Although the taxing officer did not state categorically that he applied the principles stated above, he did apply them. The award, in my consideration, deserves no interference. I am saying so because in order to poke into the taxing officer's decision on costs, the court will only do so, when the award of the taxing officer is so high or so low as to amount

an injustice to one party. I do not see that was case. Otherwise, I will be discouraging recruits to the profession. I think, the taxing officer was reasonable enough and properly applied the laid down principles.

For the foregoing reasons, this application has no merit. It is dismissed with costs.

AK. Rwizile
Judge
10. 05. 2021

Delivered this day of 10th day of May 2021

AK. Rwizile
Judge
10. 05. 2021

 Recoverable Signature

X



Signed by: A.K.RWIZILE

