

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

AT DAR ES SALAAM

CIVIL REFERENCE NO. 24 OF 2019

(Originating from Bill of Cost No. 60/2019)

**A-ONE PRODUCT AND BOTTLERS LTD.....APPLICANT
*VERSUS***

BASF FZE.....RESPONDENT

RULING

This is a reference from the decision of the taxing officer (deputy registrar) who taxed the bill of cost in favour of the respondent above mentioned: instructions fees Tsh 8,000,000/=, attendance fees Tsh. 1,300,000/=, perusal and filing costs Tsh 66,500, current bill of costs (before the taxing officer) Tsh 500,000/=. Essentially the applicant mentioned above is unhappy with an amount taxed as instruction fees a sum of Tsh. 8,000,000/=. In the affidavit in support of a chamber application, the applicant grounded that: one, it was incorrect for the taxing officer to tax the cost under the Nineth Schedule while the nature of the claim in the main suit does not fall under liquidated sum; two, the taxing master (sic, officer) has failed to address himself on the issue of EFD receipt as argued by both counsel, thus if he could have addressed so he wouldn't allow such cost to the respondent; three, the matter in dispute (Civil Case No. 89/2014) did not involve any difficult or complicated legal issues.

Mr. Roman Selasini Lamwai learned Advocate filed submission in chief in support of the application and Mr. Juvenalis Ngowi learned Counsel filed reply in opposition thereto.

In the impugned ruling, the taxing officer made a very brief finding that the Ninth Schedule to GN. 264 of 2015 provides for what should be taxed for the cases of this nature (before him) and went on to tax a sum of 8,000,000 as instruction fees for the reason that is what the law provide as a statutory amount to be charged. The taxing officer did not make it clear as to whether that amount is statutory fixed or is based on some arithmetic computation. Neither indicated the formulae or percentage for arriving at that figure.

At page three of a typed ruling, second line from the top depict that a sum claimed in Civil Case No. 89/2014 where costs were awarded, was for liquidated damage of USD 78,000. According to the Bank of Tanzania web site, the exchange rate of USD to Tsh. as on 30/10/2019 when the decision of the taxing officer was made, was Tsh. 2,291.92 . Now, Tsh 2,291.92 times USD 78,000 is equal to Tsh. 178,769,760. According to item 7 on the Ninth Schedule to the Advocates Remuneration Order, G.N. No. 264 of 2015, published on 17/7/2015 (the date inserted by handwriting), provide for scale of fees for contentious proceedings for liquidated sum in original jurisdiction for any claim between 150,000,000/= and 400,000,000/= to be chargeable 3% up to 7%. In his submission, the learned Counsel for respondent submitted that the period of four years where Civil Case No. 89/2014 remained pending in court, the respondent spent a lot of time, money and invested energy in researching and conducting the hearing of the matter. The issue of complexity of the matter and research was also

articulated by the learned Counsel for respondent herein while articulating his submission when arguing for a bill of cost before the taxing officer. However, the learned Counsel was not particular and specific as to which issues involved intricacy in conduct of the matter which necessitated a research. I understand that intricacy of the matter and more research are among the factors to be considered when assessing the amount to be taxed. But to merely allege and mention complexity of the matter and research is not satisfactory. To my view, the party who wishes for the taxing officer to impose a high rate on the scope of the radar must amplify vividly and demonstrate with details the alleged complexity and research work done on the particular matter or proceedings. I say so, because the law/order provide for the minimum and ceiling rate to be charged. In absence of data and details for the alleged complexity and research work-done, the taxing officer should prudently opt for the minimum rate. Particulars of intricacy in handling the matter and research done, should be taken as justifying factors to persuade the taxing officer to award a higher rate. That said, I reduce the rate to 3% which is the minimum. Therefore, my arithmetic computation will be Tsh. 178,769,760 (claimed sum) divide by 100 times 3% is equal to Tsh. 5,363,092.8. In this regard, the taxed amount of 8,000,000/= is faulted and substituted with a less sum of Tsh. 5,363,092.8.

My adumbration above, by necessary implication answer and take into board an issue as to whether the proceedings of Civil Case No. 89/2014 fall under the Nineth Schedule GN. No. 264/2015 which cater for liquidated sum. Indeed, it fall under Nineth Schedule above.

However, it should be noted that Schedule to the Order does not stand solo, there must be a corresponding proviso under which the Schedule is made. Herein, taxation of costs in contentious proceedings is governed by order 40 and 41 Part IV of GN. No. 264/2015 (supra). Order 41 provide, I quote,

*'Bills of cost incurred in contentious proceedings under this Part shall be taxable according to the rate prescribed in the **Tenth, Eleventh and Twelfth Schedules to this Order**'*
bold added

Nineth Schedule is not mentioned, is missing. I think it was inadvertently omitted, thus creating a lacuna. But for all intent and purpose Nineth Schedule which on its heading is titled in capital letters "SCALE OF FEES FOR CONTENTIOUS PROCEEDINGS FOR LIQUIDATED SUM IN ORIGINAL AND APPELLATE JURISDICTION" ought to fall under Order 41 above. It is to be noted that, the situation at hand does not fall under the doctrine of "Non liquet" which literally means a situation where there is no applicable law or the law is not clear. In other words, my verdict above does not amount to filling a lacuna in the statute book, rather to restore omitted words. I make an aspiration to a persuasive case of **Union of India & ORS v V.R. Nanukuttan Nair**, Civil Appeal Nos. 4714-4715 of 2012, Civil Appellate Jurisdiction, Supreme Court of India, delivered by Justice Hemant Gupta, held that I quote,

'It, thus, transpires that by judicial interpretation, words cannot be added to a statute, which would include the Rules, Regulations and Instructions issued under a Statute,

*as an excuse to give effect to its plain meaning of the language of the regulations. If the legislature has left a lacuna, it is not open to the Court to fill it on some presumed intention of the legislature. **But where the Courts find that the words appear to have been accidentally omitted, or if adopting a construction deprives certain existing words of all meaning, it is permissible to supply additional words but should not easily read words which have not been expressly enacted.** The Court should construct the provisions harmoniously having regard to the context and the object of the statute in which a provision appears, to make it meaningful'* bold added

This judgment is attached to an article by Adv. R.S. Agrawal dated 17 November, 2019 found at *LatestLaws.com*.

Therefore, adding of words is permissible, as a matter of harmonizing the interpretation of the Order vis-à-vis Schedules.

Regarding a complaint that the taxing master (sic, officer) has failed to address himself on the issue of EFD receipt. It is true that the taxing officer did not address this issue. Nevertheless, the same does not add any value to his argument. This Court speaking through Honorable V.L. Makani, J in **Salehe Habib Salehe vs Manji Gurmukh Singh and another**, Reference No. 07/2019, High Court of Tanzania, Land Division (cited by the learned Counsel for respondent), at page 8 second paragraph, made it

clear regarding production or proof by EFD receipt to folio of a bill of instructions fee, I quote,

'And since the scales are prescribed then proof in terms of receipt (of whatsoever kind) would not be necessary as the scales are already statutorily provided for'

That said, save for the alteration on the quantum of instructions fee, other items taxed by the taxing officer remain undisturbed as were not complained off. For avoidance of doubt: instruction fee Tsh. 5,363,092.8; attendance fees Tsh 1,300,000; perusal and filing costs Tsh 66,500; current bill (before the taxing officer) Tsh 500,000, making a grand total of Tsh. 7,229,592.8.

Reference succeed to the extent depicted above. No further cost for this reference.



E.B. Luvanda
Judge
8.6.2021

8.6.2021

Coram: E.B. Luvanda, J

For the applicant: Absent

For the respondents: Mr. Luka Elingai Advocate

B/C: Bahati

Court: Ruling delivered at chamber court.



E.B. Luvanda
Judge
8.6.2021