

IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MBEYA  
AT MBEYA

LAND REFERENCE NO.4 OF 2020

(Arising from Bill of Costs No. 5 of 2019 in Land Case No. 10 of 2015)

Fwanda Limited ..... Applicant

Versus

Marmo E. Granito Mines (T) Ltd ..... Respondent

**RULING**

*Date of last order: 15.07.2021*

*Date of Ruling: 17.07.2021*

**Ebrahim, J.:**

The Applicant has filed the instant ruling praying for this court to set aside the ruling of the Taxing Master in Bill of Costs No. 5 of 2019 and dismiss the same. The application has been preferred under the provisions of **section 7(1) of the Advocates Remuneration Order 2015, GN 264 of 2015, section 17(1)(a), (b), (d) and (e) and section 19 (1) of the Law of Contract Act, CAP 345 RE 2019 and section 95 of the Civil Procedure Code, Cap 33 RE 2019.** The Application is supported by the

affidavit of Joseph Z.M. Mwendabwila, a principal officer of the Applicant.

According to the averments of the Applicant in his affidavit, he contesting the item 1 and 2 of the above stated Bill of Costs to be based on fraudulent documents and that the Taxing Master has awarded cost basing on those documents.

The application was argued by way of written submission whereas the Applicant is represented by Mr. Joseph Mwendabwira the Managing Director and the Respondent was represented by advocate Timotheo Michombe.

Submitting in support of the application, the Applicant began by defining the meaning of fraud in terms of section **17 (1) (a)(b)(d) and (e) and 19(1) of the Law of Contract Act, Cap 345 RE 2019** as the basis of the instant applicant. He contended that the Taxing Master ignored his plea that item no.1 and 2 used to claim costs were fraudulent. On item one he complained that the Taxing Master taxed off Tshs. 100,000/- from proforma invoice no. 0068 of 11.02.2018 without condemning it as fraudulent document **(Master V Miller (1) 100 ER**

1042 p 1047 – no man should be allowed permitted to commit a fraud without running a risk of losing when it is detected). As for item no. 2, the applicant claimed that the VAT receipt no. 0002/001229 of 24/7/2017 shows that ACM Parfait Advocates paid VAT of Tshs. 270,000/- after they had received Tshs. 1,770,000/- from Unknown Client. He pointed out other anomalies being that the VAT does not indicate name of Marmo E. Granito Mines and of the judgement debtor Fwanda Limited. It is does not indicate the case no. He complained the fact that the Taxing Master taxed off Tshs. 770,000/- instead of dismissing it all as a decree holder used a deceiving VAT receipt. He referred to the case of **Karia and Others Vs V.K. Shah and Another, Civil Appeal No. 39 of 1962 Mombasa at pg 43 of the Eastern Africa Law Report 1962** where it was held that a party cannot be allowed to succeed in a case which he found on a forged document and it was disregarded by relying on other evidence. He contended therefore that since the Taxi Master agreed that the decree holder committed deceit, he ought to have declared it. He thus prayed for the dismissal of the Bill of Costs No. 5 of 2019.

Responding to the submission by the Applicant, counsel for the Respondent disagreed with the Applicant that there is no forgery made by the Respondent in presenting bill of cost as the receipts were not forged. He contended also that in conducting bill of cost, the Taxing Master is guided by the **Advocate Remuneration Order, GN No. 264 of 2015** and **Income Tax (Electronic Fiscal Devices) Regulations GN No. 289 of 2012** and **Value Added Tax and the Tax Administration Act** are not applicable in the present application. Counsel for the Respondent argued that there is no requirement to submit receipts issued by EFD machine or manual receipts in proof of instruction fees of consultation fees in terms of **Order 58(1) of the Advocate Remuneration Order, GN No. 264 of 2015**. To cement his argument, he cited the case of **Salehe Habib Salehe Vs Manjit Gurmukh Singh and Another**, Reference No. 7 of 2019 (HC) where it was held that EFD receipt may be relevant where there is a dispute relating to taxing matter and that there is no need of proof of instruction fees by presentation of EFD receipts. He further cited the Court of Appeal case of **Tanzania Rent A Car Limited Vs Peter Kihumu**, Civil Reference No.9 of 2020 where it was held that:

*"...there is no need of proof of instruction fees by presentation of receipts, vouchers and/or remuneration agreement because the taxing officer among others, is expected to determine the quantum of the said fees in accordance with the cost scales statutorily provided".*

Counsel for the Respondent expressed his opinion that the Taxing Master misdirected himself by taxing off Tshs. 100,000/- for consultation fees since it does not require proof of EFD machine receipt or manual receipt. He prayed for the application to be dismissed with costs.

In rejoinder, the Applicant insisted that the matter in the instant application is about the use of fraudulent documents in claiming costs by the Respondent. He repeated his earlier submission in chief.

Indeed, the Application is based on the fact that the receipts or documents used to claim for costs in item 1 and 2 of the bill of costs are forged and fraudulent. The Applicant went further to define the meaning of deceit and fraud under the contract law. The Applicant has also used the term remuneration agreement to forge a connection between the bills of cost and that the Respondent and the advocate used a forged document.

First of all, I must point out here at the outset that with respect to the Applicant, he is using so much energy to forge the connection between the contract law and the matter at hand. All the cases he has cited are distinguishable not only on the circumstances of the case but also on the law applicable. The principles that he urges this court to use in the instant case concerns the contract entered between two parties who have set their own agreed terms and conditions. The Applicant is forcing issues to equate the genesis of the provisions of the Contract Law with the term **"remuneration agreement"** as defined under **Order 3 of the Advocate's Remuneration Order, 2015 GN No. 264 of 2015** which is defined to mean:

*"an agreement between an advocate and a client stipulating terms payment of charges in respect of services offered or to be offered by the advocate to his client";*

From the above definition, the advocate enters into an agreement with his/her client on the terms of payment of the services to be rendered, that is their remuneration agreement and in no way would the Applicant be privy to it to claim that they used a fraudulent document.

A simple translation of the phrase document as termed by the Applicant is that a document has been falsified/alterd/forged to make it appear genuine by someone who has no authority over that document or without permission to alter it. The Applicant claims that the Respondent used a **proforma invoice no. 0068 of 11/02/2018** to claim costs of Tshs. 100,000/- as consultation fees. The question now comes, was the said proforma a forged or fraudulent document? The Applicant has vigorously argued that the Taxing Master used fraudulent/ forged documents to reach to a decision which he ought to have dismissed the bill of costs after declaring the document to be fraudulent. First of all, that is a misconception as I have thoroughly gone through the ruling of the Taxing Master of 31.10.2019 and found nowhere that he has declared any document to be a fraudulent document or any transaction for that matter. He only said that proforma invoice is not a payment receipt as contended by the judgement debtor. For a document to be termed as fraudulent one has to prove as per the definition I have shown above that the same has been altered, forged or falsified so as to be presented as a genuine document. A tendering of a document that cannot be used

to prove a claim on itself cannot be termed as fraud. In-fact fraud is a criminal liability that has to be proved beyond reasonable doubt. More – so when fraud is alleged in a civil matter its proof is beyond the balance of probability. I see no where that the Applicant has managed to prove that the documents tendered were fraudulent documents.

Again, the Applicant has conceded in his rejoinder that he is not disputing that the law applicable in bill of costs is **GN NO. 264 of 2015**, neither does he dispute the position of the law that the advocate is not obliged to use receipts, in his own contention he asserted as follows:

*"All in all, the Decree Holder has totally gone astray by deliberating about as to whether Advocates should be obliged to use receipts in claiming cost or not. This is not the subject matter in this Reference No. 4 of 2020. The subject matter is about the use of fraudulent documents in claiming costs by the Respondent (Decree)".*

It goes therefore that since the Applicant claim in this application is on the use of the fraudulent document, and it is my firm stance that he has not managed to prove that the documents were



fraudulent documents and tendering of a proforma invoice cannot be termed as a fraudulent act under the circumstances of this case. The Applicant has greatly mis-conceived the use of the term fraud/forgery.

That being said therefore, I find this application to be unmeritorious and I dismiss it with costs.

Accordingly ordered.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over a faint circular stamp.

R.A. Ebrahim  
Judge

Mbeya

17.09.2021

**Date:** 17.09.2021.

**Coram:** P. D. Ntumo – PRM, Ag-DR.

**Applicant:** Present, Mr. Fwanda.

**For the Applicant:** Absent.

**Respondent:**

**For the Respondent:** Absent.

**B/C:** P. Nundwe.

**Court:** Ruling delivered in open chambers in the presence of Mr. Joseph Mwandabila, Principal Officer of the applicant only this 17<sup>th</sup> day of September, 2021.



P.D. Ntumo - PRM

Ag- Deputy Registrar

17/09/2021