

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
DISTRICT REGISTRY OF MBEYA  
AT MBEYA  
LAND REFERENCE NO. 8 OF 2020.**

**(Arising from the Bill of Costs No. 10 of 2019, and Misc. Civil  
Application No. 20 of 2018, in the High Court of Tanzania,  
at Mbeya).**

**BOMBAGA ASALILE.....APPLICANT**

**VERSUS**

**1. PHILIPO MWANSASU.....1<sup>ST</sup> RESPONDENT**

**2. JOHN SWILA.....2<sup>ND</sup> RESPONDENT**

**ORDER**

**27/05 & 21/09/2021.**

**UTAMWA, J:**

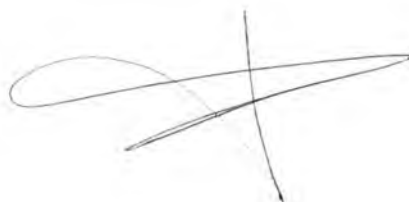
In this matter, the applicant, BOMBAGA ASALILE made a reference to a Judge of this court against the ruling dated 23<sup>rd</sup> June, 2020 (the impugned ruling) of the taxing officer of this court (Mwakatobe, Deputy Registrar) regarding the Bill of Costs No. 10 of 2019 that arose from Misc. Civil Application No. 20 of 2018, in this same court. The reference at issue



was preferred by way of chamber summons under order 7(1) and (2) of the Advocates Remuneration Order, 2015 (GN. No. 264 of 2015), henceforth the ARO. This followed the applicant being granted extension of time to file the reference by this court (Mambi, J.) through the order dated 8<sup>th</sup> December, 2020 (being part of the record). The chamber summons at hand was supported by an affidavit sworn by the applicant.

Upon being served with the documents related to this reference, the two respondents PHILIPO MWANSASU and JOHN SWILA (henceforth the first and second respondent respectively), neither appeared in court nor filed their respective counter affidavits in objecting the same. The court thus, directed for the hearing of the reference to proceed *experte* by written submissions. The applicant accordingly filed his written submissions through Ms. Rehema Mgeni, learned counsel, hence this ruling.

In the affidavit supporting the application, the applicant deposed as follows: that, he was the judgment debtor in the application that arose the bill of costs. He was aggrieved by the impugned ruling on the following grounds; that, in awarding some claims in the bill of costs the taxing officer did not exercise her discretion judiciously. She for example, awarded Tanzanian Shillings (Tshs.) **2, 000, 000/=** as instruction fees for the respondents' counsel on assumption that the sum was paid by John Swila which was contrary to the contents of the record. She again, awarded Tshs. **300, 000/=** as costs for bus fare of the respondents' counsel to and from Dar es Salaam, which was also contrary to the contents of the record. Again, the applicant deposed that, the taxing officer was not justified in

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awarding Tshs. 1, 000, 000/= as costs for the respondents' counsel attending the bill of costs.

In her written submissions in support of the reference, the applicant's counsel essentially reiterated the contents of the affidavit. She further submitted that, in the bill of costs, the respondents had claimed a total sum of Tshs. 10, 753, 000/= being costs incurred by their counsel for performing various legal duties and transport to and from Dar es Salaam by air. Only Tshs. 3, 520, 000/= were awarded through the impugned ruling. The rest claims were taxed off for being excessive, exaggerated and superfluous.

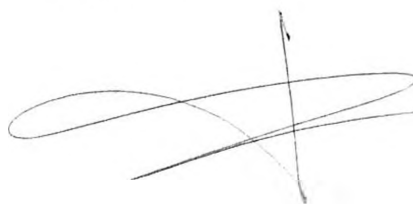
The learned counsel further argued that, the taxing officer wrongly awarded the said Tshs. 2, 000, 000/= assuming that the counsel was instructed by both respondents. The record however, shows that the counsel represented only the first respondent. This court is thus, entitled to interfere with that particular award of the Taxing Officer. The learned counsel supported her contention by the case of **Haji Athumani Issa v. Rweitama Mutatu [1992] TLR 372 (HCT)**. In that case, she submitted, it was held that though a judge may not in law interfere with the question of quantum awarded by a taxing officer, he can do so if the taxing officer acted injudiciously.

Concerning the award of Tshs. 300, 000/= as bus fare for the respondent's counsel, the learned counsel for the applicant contended that, the dates shown in the air ticket submitted by the respondents' counsel were irrelevant to the dates of the case. It was thus, unfair for the taxing

officer to award bus fare, instead of the air tickets for the appearance of the respondent's counsel for three times as she did. The said Tshs. 300, 000/= were neither incurred nor proved. It is the law that, a bill of cost is a factual statement of services rendered and disbursements made as held in the case of **Balwantrai D. Bhatt v. Ajeet Singh and another [1962] 1 EA 103.**

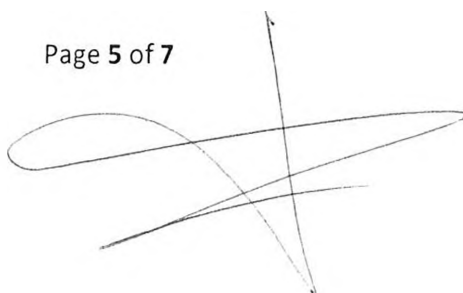
I have considered the chamber summons, the affidavit, the submissions by the applicant and the law. In my view, the fact that the matter proceeded *ex parte* as hinted above is not the only reason why this court should grant this application. This is because, it is a firm legal stance that, courts of law are enjoined to decide matters before them in accordance with the law and Constitution. This stance of the law is indeed, the very spirit underscored under article 107B of the Constitution of the United Republic of Tanzania, 1977, Cap. 2 R. E. 2002. The principle was also underlined in the case of **John Magendo v. N. E. Govan (1973) LRT n. 60.** It follows thus, that, a court of law has to decide matters before it according to law irrespective of the passive reaction opted to by any party to the proceedings.

Now, having observed as above the issue before me is *whether or not the taxing officer was justified in taxing the bill of costs at the tune complained of by the applicant.* In my view, the major of the applicant squabble is on the three aspects namely the awarded Tshs. 2, 000, 000/= as instruction fees, Tshs. 300, 000/= as bus fare and Tsh. 1, 000, 000/= as costs for the respondent's counsel in attending the bill of costs that raised

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the impugned ruling. I will thus test the genuineness of each of the awarded sum.

Regarding the said Tshs. 2, 000, 000/= being instruction fees, I am of the view that, though the record shows that the learned counsel in fact represented both respondents as rightly held by the taxing officer (at page 6-7 of the copy of the impugned ruling), there is no evidence that the said amount of Tshs. 2, 000, 000/= were actually paid by any of the two respondents as instruction fees and no receipt was produced to that effect. The taxing officer found that she was not enjoined to look at the receipt because she had not requested for the same before. She based her finding on order 58 (1) of the ARO. Indeed, these provisions guide that, 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. The provisions thus, vests the taxing officer with the discretion to require for the production of the receipt. In other words, these provisions of law make the production of receipts (on payments of the nature under discussion) necessary upon the taxing officer requiring for the same. My emphasis here is that, since the instruction fees were disputed, the taxing officer ought to have used her discretion judiciously by requiring the production of the receipt. Now since she did not exercise her discretion to do so under such circumstances, I agree with the applicant's counsel that, she did not exercise her discretion judiciously. I thus, find that she was not justified to award the said Tshs. 2, 000, 000/= as instruction fees.



Regarding the said awarded Tshs. 300, 000/= as bus fare, I am also of the view that that, there was no proof that the same were in fact, paid since no receipts were produced to that effect. Besides, it is not shown in the impugned ruling as which was the basis for taxing the amount at that time. Moreover, the respondents' counsel himself did not alleged that he had travelled by bus from Dar es Salaam to Mbeya and back for those three times. He only alleged that, he had travelled by air. However, the air tickets he produced before the taxing officer showed irrelevant dates to the case before the court, hence the rejection by the taxing officer herself. I thus, agree with the applicant's counsel that this sum was also not justified.

As to the Tsh. 1, 000, 000/= being advocates fees for attending the bill of costs, I am of the view that, the taxing officer's finding was based on her discretion exercised judiciously. The sum is indeed, awardable under order 55(3) of the ARO. The provisions guide that, fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer. In her finding, the taxing officer gave the following reasons for awarding the sum: that, the respondents actually hired the counsel, the counsel drafted the application and prosecuted it, he prepared himself for the hearing, he did research for the same and appeared in court. Due to these reasons which were not disputed by the applicant, I find this award justified.

Owing to the above reasons, I answer the issue posed above partially affirmatively and partially negatively as follows: the taxing officer was

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justified in taxing the bill of only at the tune of Tshs. 1, 000, 000/= being costs for the respondents' counsel attending the taxation. She was nevertheless, unjustified in awarding the said Tshs. 2, 000, 000/= as instruction fees and Tsh. 300, 000/= as bus fare.

I therefore, partly grant the application and partially dismiss it. I according direct that, a total sum of Tsh. 2, 300, 000/= (being instruction fees and bus fare respectively) ought to have been taxed off by the taxing officer. The applicant shall therefore, pay to the respondents only Tshs. 1, 000, 000/= (One Million Only) as costs for the respondent's counsel attending the taxation instead of the larger amount that was awarded by the taxing officer. Each party shall bear his own costs for this reference since the reference has only partly succeeded as shown above. It is so ordered.



J.H.K. UTAMWA  
JUDGE  
09/09/2021.

**Date: 22.09.2021.**

**Coram:** Hon. P.D. Ntumo - Ag-DR.

**Applicant:**

**For the Applicant:**

**1<sup>st</sup> Respondent:**

**2<sup>nd</sup> Respondent**

**For the Respondent:**

Absent.

**B/C:** S. Saanane.

**Court:** This order pronounced in open chambers this 22<sup>nd</sup> day of September 2021 in the absence of the parties.

*hh*

P.D. Ntumo - PRM

Ag- Deputy Registrar

22/09/2021