

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL REFERENCE NO. 05 OF 2020

(Originating from Taxation cause No. 60 of 2018)

TRIPPLE "B" SUPPLIES (T) LTD.....APPLICANT

VERSUS

SHAM JOAKIM NGOTEIYA.....1ST RESPONDENT

FIDELIS MBOYA.....2ND RESPONDENT

RULING

27/07/2021 & 20/10/2021

GWAE, J

Dissatisfied by the decision of the Taxing Officer in Taxation Cause No. 60 of 2018, the applicant has filed this application under the provision of Rule 7 (1) and (2) of the Advocates Remuneration Order, 2015 (GN. No. 264 of 2015) praying for an order to examine the ruling of the Taxing Officer so as to satisfy itself as to the correctness, legality or propriety of the said ruling and replace it with a correct and justifiable award.

The application is supported by the sworn affidavit of one Cuthebert Uronu, the managing director of the applicant where reasons for this reference have been stated as follows;

- i. The Taxing Officer instead of assessing the amended bill of costs, he assessed both the previous bill of costs and the amended bill of costs and erroneously ruled that there was duplication of receipts for instruction fee.
- ii. The Taxing Officer erred in demanding EFD receipt for every amount claimed by the applicant while the same were irrelevant in taxation of costs.
- iii. The Taxing Officer erred by his failure to consider that costs of attending in court is not limited to transport costs only but include reimbursement for the time wasted in court and other matters which cannot be evidenced by receipts.
- iv. The Taxing Officer erred in not granting any amount of costs for drafting, filling and attending the bill of costs.

The Judgment debtors did not enter appearance even after being dully served, therefore hearing of the application proceeded in the absence of the judgment debtors. At the hearing, the applicant was represented by Mr. Josephat Msuya who did not have much to add to the applicant's affidavit save for the case of **Tanzania Rent a Car Limited vs. Peter Kimuhu**, Civil Reference No. 09 of 2020 which the applicant's counsel urged this court to make a reference to it.

I have had time to go through the records in the taxation cause together with the application at hand and I wish to answer the applicant's queries as follows;

Firstly, that, it is the applicant's complaint that the Taxing Officer assessed both the previous bill of costs and the amended bill of costs and erroneously ruled that there was duplication of receipts for instruction fee. Looking at the ruling delivered by the Taxing Master it is not true as averred by the applicant that, the taxing master assessed two versions of the bill of costs. What was done by the taxing master was to make a comparison of the receipts in respect of the instruction fee, and according to the ruling, it was the finding of the court that the EFD receipt which appeared to have been issued on the 26th September 2019 could not be accepted by the court as the same seemed to have been issued nine months after the bill of costs had been filed. The taxing officer was therefore of the view that the instruction fee was not proved by EFD receipt and therefore the same was taxed off.

In essence, I absolutely join hands with the taxing officer as far as the EFD receipt is concerned on the reasons that, initially, the applicant filed his bill of costs which was later on amended and the instruction fee was Tshs. 3,600,000/= and the same was evidenced with an EFD receipt and as correctly observed by the taxing officer, looking at the EFD receipt it appears to have been issued on 26/09/2019 while the bill of cost appears to have been filed on 19/12/2018 which

implies that, at the time of filing the bill of costs the EFD receipt had not yet been issued. This is very illogical and any court of law could not have allowed the same, certainly, any taxing officer would have disregarded the said EFD receipt.

The next question that follows is whether the taxing officer was correct to hold that the applicant's claims were not proved in the absence of the EFD receipts. In the above cited case of **Tanzania Rent a Car Limited** (supra) the Court of Appeal of Tanzania observed that;

"The award of instruction fees is peculiarly within the discretion of a taxing officer and the Court will always be reluctant to interfere with his decision, unless it is proved that the taxing officer exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong consideration."

From the above quoted holding, it follows that, the taxing officer has a wide discretion in awarding instruction fees however the same should be exercised within the ambits of the costs scale prescribed by the Rules so that, the same cannot be used to enrich advocates rather than to compensate them for the work they have done in the preparation and conducts of the case.

Nevertheless, the mode of proving instruction fees is very important and essentially, it is the subject of this contention. The taxing officer taxed off the claim of instruction fees relying on the EFD receipt which was not considered by the

taxing court. From the decision of the above cited case by the superior court of this country to which all courts below are bound with, I hasten to defer with the findings of the taxing master since the current position of the law departs with the mandatory requirement of attaching EFD machines in proving the bill of cost, in this case of **Tanzania Rent a Car Limited vs. Peter Kimuhu** (supra) the court further stated;

“On the basis of the above provision and authority I am in agreement with Mr. Kobas that in taxation of bill of costs 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 for together with the factors enumerated above.”

From the above principle of law, it follows that it was improper for the taxing officer to have taxed off both the costs of instruction fees and other fees for attending to court as reflected in items 2-9 of the amended bill of costs on the basis that the same were not proved by the EFD receipts. Following the principle laid down by this case, the paramount guidance should be on the cost scales as statutorily provided by the law, together with other factors such as the greater the amount of work involved, the complexity of the case, the time taken up at the hearings including attendances to the court, correspondences, perusals and the

judicial authorities or arguments. On equal footing in this case, the Civil Appeal does not appear to be of complexity NATURE and I am therefore of the view that the Instruction fees of TZS 3,600,000/= as claimed by the decree holder/applicant is high and above, I am satisfied that the considerable amount to be awarded as instruction fees to the decree holder/applicant should be Tshs. 1,500,000/= and the rest is taxed off.

The next for consideration by this court is on the costs of attendance in court by the applicant's advocate. The applicant has alleged that, the Taxing Officer failed to consider that costs of attending in court is not only limited to transport costs but also same includes reimbursement for the time wasted in court and other matters which cannot be evidenced by receipts. With due respect, I am of the opinion that, the learned counsel is highly misconceived, as looking at the applicable law in taxation of costs, in particular on the third schedule there is nothing provided by the law as costs for time wasted in attending in courts. However, I have taken into account costs incurred for transportation by the applicant's counsel from his office premises to the court. I therefore award TZS 500,000/= as costs for transportation.

On the last complaint by the applicant that, the taxing officer erred in not granting any amount of costs for drafting, filing and attending the bill of costs,

Again, this court finds the complaint to be irrational on the basis that these costs by necessary implication are covered under the instruction fees.

Without further ado, this reference succeeds to the extent explained above a total of Tshs. 2,000,000/=). In the event each party to bear its own costs.

It is so ordered.




M. R. GWAE
JUDGE
20/10/2021