

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**CIVIL REFERENCE NO. 01 OF 2021**

(Arising from Taxation Cause No. 1 of 2021 of Kigoma Resident Magistrate Court  
Before G.E. Mariki, PRM)

**SAID S/O ALLY.....APPLICANT**

**VERSUS**

**HAIDARI R. MSHIHA..... RESPONDENT**

**R U L I N G**

9<sup>th</sup> & 10<sup>th</sup> November, 2021

**A. MATUMA J.**

The Respondent herein successfully prosecuted the Bill of Costs against the Applicant at the tune of Tshs 1,680,000/= in which Tshs. 1,000,000/= was taxed as advocate's instruction fees, Tshs. 40,000/= as Disbursement of Court fees, Tshs. 120,000/= as disbursement of Costs for advocate's attendance in court for four days Tshs 30,000/= per each attendance, and Tshs 520,000/= as costs for drafting an application for Bill of Costs, attendance in the case for Bill of Costs, filing fees of the Bill of Costs and personal attendance of the respondent in the case of Bill of Costs. That makes a total of the taxed amount to be **Tshs 1,680,000/=**. The

applicant became aggrieved with such taxation hence this application for Reference to have the taxation revised.

At the hearing of this application, the applicant appeared in person while the respondent was present in person and had also the services of Mr. Damas Silvester Sogomba learned advocate.

The applicant submitted that the taxed costs were not authenticated by any evidence as the claim was not supported by any receipts be it receipts for fuel allegedly used in the advocate's vehicle for court attendance or receipt for instruction fees. He called this court to doubt if truly the learned advocate was paid such instruction fees even if it is within the remuneration scale. He was of the view that in respect of the fuel of the advocate's vehicle, only five litres could suffice for going to court and returning back to his office per each attendance which could have cost not more than Tshs. 15,000/= per each attendance.

On the instruction fees, the Applicant submitted that in the absence of a receipt at least Tshs. 400,000/= could be taxed as a reasonable amount but not Tshs. 1,000,000/= which had no proof. He also offered Tshs 150,000/= as costs for the Bill of Costs proceedings as there was no sufficient evidence to prove the claimed Tshs 520,000/=.



Mr. Sogomba learned advocate submitted at length that the taxed amount is within the remuneration scale and therefore there was no law offended. He referred me to the case of ***Tanzania Rent A Car Limited versus Peter Kimuhu***, Civil Reference No. 9 of 2020 (CAT) to the effect that Bill of Costs need not necessarily be proved by receipts.

Having heard the parties, I agree with Mr. Sogomba learned advocate that in Taxation for Bill of Costs there is no necessity for the proof of instruction fees by presentation of receipts, vouchers and or remuneration agreement as per the case of **Tanzania Rent A Car Limited** supra.

But that does not mean that the door is open for advocates and their clients to manufacture claims for costs by mere mentioning that there is this and that costs merely because they are within the remuneration scale. There must be proof of the incurred costs to the satisfaction of the court. That was as well observed by my learned brother Mkasimongwa, J. in the case of ***Sapi Investment Limited versus Azid Kaoneka***, Misc. Civil Reference No. 4 of 2019 (HC at Tanga) in which at page 5 he held;

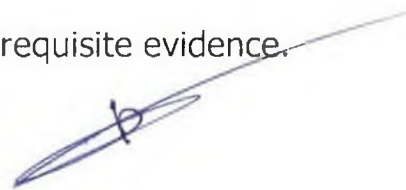
***'It is not expected that the Taxing Master has just to endorse what is claimed as costs. In Taxation of Bill of Costs, the Taxing Master has to determine the amount to be taxed and from what item. In that premise it is left to the parties in the Taxation Proceedings to***

***adduce evidence proving or disproving what is claimed as costs'***

I full purchase such holding and rule out that the burden of proof for whatever claim is there, has not been waived and shall always be there.

Mr. Sogomba has always been referring the law (Advocates Remuneration Order) to the effect that what was taxed was within the remuneration scale, fine! But is the law evidencing that a certain claimed costs was actually paid and or incurred?

The law only provides for the rights and entitlements of advocates from their clients in the execution of their professional duties, to their clients. It does not prove what the client has incurred in receiving the services of an advocate. Therefore, one should not argue the law as evidence, but the law to substantiate or validate the entitlements and rights. The party claiming for the rights or entitlements as per the Advocates' Remuneration Order is obliged to bring evidence to establish as such. In the circumstances the claimed costs should have been proved by evidence and not by law. The law did not witness the costs being incurred nor does it stand as a substitute of the requisite evidence.



The issue is therefore; ***whether in the instant matter there was sufficient evidence to warrant the taxed Tshs 1,680,000/= against the Applicant.***

At the hearing of the taxation Cause Mr. Sogomba for the Applicant now Respondent did not produce evidence to prove that he dully received Tshs. 1,000,000/= from the respondent herein as instruction fees. He simply argued for it in accordance to the law without any sort of evidence be it an affidavit, receipts or oral evidence. He simply submitted as per record;

*' 1<sup>st</sup>, the applicant requests for costs used to engage advocate which is instruction fees at Tshs. 1,000,000/=. These fees were paid according to the advocates remuneration order 11<sup>th</sup> (M) for opposed application which is 1,000,000/=. The applicant opposed the application and hence entitled to these fees'.*

What the learned advocate did was to argue the law without evidence or facts. It was the arguing of the rights and entitlements according to the law but not proving such rights and entitlements.

There should first be evidence and or facts, then the law comes in to give relief or remedy such facts/evidence. The submissions of advocate Sogomba during taxation proceedings were not evidence to be worked

upon to grant the claims as it was held in the case of ***Morandi versus Petro [1980] TLR 49*** which I also cited in the case of ***Joseph Juma versus Nasibu Hamisi Misc. Civil application No. 48 of 2018*** [HC at Tabora] that;

*'Submissions made by a party to an appeal in support of grounds of appeal, are not evidence but arguments on the facts and law raised before the court. **Such submissions are made without oath or affirmation, and a party making them is not subject to cross examination by his opponent**.'*

In the like manner, Mr. Sogomba argued the law without facts or evidence which denied the Applicant herein to bring evidence in opposition nor such submission was subject to cross examination and or countered by affidavit. It was neither a receipt to attract its scrutiny. There were bare claims which were endorsed by the Taxing Master as they were claimed.

It should be remembered that the Tshs 1,000,000/= which was taxed is the maximum pay in the law for the Applications of that nature. It was absolutely wrong to award the maximum costs under the law without sufficient evidence to warrant the same. I therefore vacate the taxed Tshs. 1,000,000/= for having not been proved. Since there was no any sort of evidence as herein above demonstrated for the claim of Tshs.

1,000,000/=, the Advocates Remuneration Order cannot be a substitute evidence to warrant it. I substitute for it with Tshs 400,000/= which the Applicant himself sought it reasonable. That is a favour to the respondent by the applicant as he is willing to pay it despite the fact that there is no any evidence that such amount was in fact paid to his advocate.

Court fees for both the applications in question and application for Bill of Costs whose total value is Tshs 80,000/= are grantable as they are authenticated by the relevant court exchequer receipts.

The remaining Tshs. 480,000/= out of Tshs. 520,000/= which was taxed as general costs for the Bill of Costs because Tshs 40,000/= is already included in the Tshs 80,000/= granted supra, was not proved any how just like the instruction fees herein above, I will therefore reduce the same into only Tshs 100,000/= which is again a favour to the respondent for it has not been backed-up with any evidence. The same is granted just because there was really a taxation cause and it was litigated. Some costs might have been incurred but not necessarily that the advocate was paid.

Again, the taxing master denied the respondent costs he claimed for attendance and meals in the application on the ground that **'there was no justification brought by the applicant for these allowances.'** He had thus no justifiable cause to grant the claims of the same nature in



the taxation cause as there was also no justifiable cause or proof of whatever sort other than a bare claiming.

Now it is costs for advocates' attendance in court at Tshs 30,000/= per each attendance for four consecutive attendances. These attracted a total of Tshs. 120,000/= which was taxed.

That amount was claimed as costs incurred to fuel the advocate's motor vehicle for going to court and returning into his office in defending against Misc. Land application No. 1/2021 by the applicant herein.

The advocate as would be an individual litigant is entitled to use his private vehicle to attend court proceedings and if at the end of the day costs of the matter are awarded, the litigant or client of the advocate would be entitled to disbursement of the costs incurred to fuel the vehicle in question. Such costs would only be determined as it would be reasonable because it is difficult to establish them by receipts as it was held in the case of ***Hotel Travertine Ltd versus National Bank of Commerce, Taxation Civil Reference No. 9 of 2006***, Ramadhani; J.A. as he then was that;

*'...there can hardly be a receipt unless one went to the court by a taxi. But if one uses one's car that can be difficult to account with a receipt. So, I will allow that claim.'*



The guiding principle therefore is a reasonability test of the claimed amount in the circumstances of the case. Since in the instant matter the movement was just within the town @ a town route, the fuel costs should have been taxed by considering fuel consumption of the vehicle in question and the distance covered from the advocate's office to the court and the return thereof.

Unfortunately, that was not stated in the taxation court to establish the fuel consumption of the vehicle and the distance covered to enable the Applicant to challenge it by producing the contrary evidence or fact. The claim of Tshs 30,000/= was thus a bare claim without any explanation and was wrongly endorsed by the Taxing master. I reduce it into Tshs. 15,000/= per each attendance which the applicant argued as a reasonable amount by whatever car that might have been used within the town route as fuel costs. In my view the Applicant is right that Tshs. 15,000/= is a reasonable amount for the purpose. The total fuel costs allowed is therefore Tshs. 60,000/=.

In the final analysis, this reference is partly allowed to the extent that the applicant is liable to pay the respondent only Tshs. 640,000/= as total costs incurred or that would have been reasonably incurred in the

circumstances of this matter in both Misc. Land Application No. 1 of 2021 and in Taxation Cause No. 1 of 2021 between the parties herein.

This application is therefore allowed to the extent herein above explained.

No orders as to costs.

It is so ordered.



  
**A. Matuma**

**Judge**

**10/11/2021**

**Court:** The Ruling delivered in the presence of the parties in person and advocate Sogomba for Respondent. Right of Appeal explained.

**Sgd: A. Matuma**

**Judge**

**10/11/2021**