

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

TAXATION REFERENCE NO. 05 OF 2020

*(Arising from Bill of Costs No. 13 of 2019 of the District Land and Housing Tribunal
of Tanga before Hon. D.W. Mangure – Taxing Officer)*

SALIMU JUMA RIKO.....APPLICANT

-VERSUS-

**MOHAMED HAMZA MIKIDAD (As Administrator of the estate of the Late
Hamza Mikidadi).....RESPONDENT**

R U L I N G

Date of last order: 03/08/2021

Date of Judgment: 17/09/2021

AGATHO, J.:

The Applicant Salimu Juma Riko was aggrieved by the decision of the taxing officer in the Bill of Cost No 13 of 2019 of the District Land and Housing Tribunal for Tanga at Tanga. He preferred an application made under Order 7(1) and (2) of the Advocates Remuneration Order, 2015, GN. No. 264 of 2015 published on 17/07/2015. The application was made by way of Chamber Summons, and it was supported by the Affidavit of the Applicant. The Respondent filed his Counter Affidavit. Suffice to mention that in the application the Applicant had the following reliefs sought:

- (a) That the Ruling and Order delivered by Hon. D.W. Mangure Chairperson as Taxing Officer on 04/09/2020 in Bill of Cost No 13 of 2019 of the District Land and Housing Tribunal for Tanga at Tanga denying the Applicant Advocate's instruction fees in respect of the Application No. 23 of 2014 of the said Tribunal be quashed and set aside.
- (b) That, the costs of the application be provided.
- (c) Any other orders as the Honourable Court deems fit and just to grant.

The application was heard on 03/08/2021 where the learned counsels for both parties (Ms. Elisia Paul for the Applicant and Mr. Eric Akaro for the Respondent) made their oral submissions.

The Applicant's counsel was the first to break the ice. She began her submission by praying to adopt the grounds set out in the Applicant's affidavit. She went on submitting that the Application was brought under Order 7(1) and (2) of the Advocates Remuneration Order, 2015, GN. No. 264 of 2015 published on 17/07/2015. She submitted that the Application was preferred to seek Court order to quash and set aside the Ruling and Order of Hon. D.W. Mangure, the Chairperson and Taxing Officer in the Bill of Cost No 13 of 2019 of the District Land and Housing

Tribunal for Tanga at Tanga denying the Applicant Advocate's instruction fees in respect of the Application No. 23 of 2014 whose decision was delivered on 04/09/2020.

She submitted further that the Applicant filed the Bill of Costs at Tanga District Land and Housing Tribunal (DLHT) with 78 items, with the sum of money which was TSH. 6,646,000/=. On 21/05/2020 the Applicant applied in the DLHT, to file notice to produce additional documents. The additional documents were official receipt. The said application was granted, and on the same date the Applicant brought the receipts that proved that he has paid the instruction fees of TSH. 3,500,000/=. The notice was dated 21/05/2020 and the receipts were of 25/04/2014, 08/04/2014, 04/07/2014, 11/08/2014, 14/11/2014 and 18/06/2014. After the application was granted and the receipts were received as Bill Costs. At this juncture, an issue that may be raised is whether this was a proper procedure for filing additional documents during hearing of the application? Were these documents attached in the Affidavit?

The Bill of Costs was heard by way of written submissions as ordered on 11/06/2020. And on 26/06/2020 the Applicant prayed to file additional documents to form part of his written submissions to prove item No. 1 (instruction fees) in the Bill of Costs. The Applicant's counsel argued that

it was surprising that on 04/09/2020 the Taxing Officer taxed off the Bill of Costs without considering the receipts that were attached and consequently taxed off the whole of the instruction fees for the reason that the receipts were not EFD receipts. The Applicant proved that the instruction fee was paid as per the receipts that were attached. Although these receipts were not EFD they were genuine receipts.

The Notice to Produce additional documents (receipts) and the receipts were annexed to the Applicant's Affidavit and were collectively marked as SJR-1. The Applicant's counsel admitted that there was error in the Applicant's affidavit on clause five (5) where it is written S-1 instead of SJR -1 and the Ruling of the DLHT in the Bill of Costs.

At this point Eric Akaro, the Respondent's counsel objected that the Affidavit being a sworn statement cannot be amended. Therefore, the prayer to correct clause 5 of the Applicant's Affidavit with respect to S-1 instead of SJR-1 is irregular.

The Applicant's counsel argued further that the Taxing Officer did not do justice because on page 4 of his Ruling paragraph 3 he said that there were no receipts tendered. Therefore, claims on item No. 1 was unsubstantiated and consequently it was taxed off. She lamented that if one sees the Bill of Costs filed, they have included the Notice to produce

additional documents (receipts), which were tendered. It was Ms. Elisia Paul's argument that what the Taxing Officer did was to deny justice to the applicant, who engaged the advocate and paid instruction fees as evidenced by the receipts. She argued that this was improper because the Bill of Costs is governed by Order 58(1) of the Advocates Remuneration Order, GN. No. 264 of 2015 which states that receipts will be brought or tendered where the Taxing Officer will require. It means the tendering of receipts is not necessary unless the Taxing Master requires. I do not agree with the argument of the Applicant's counsel in this respect. While the wording of Order 58(1) of GN No. 264 of 2015 sounds optional, in practice one cannot submit Bill of Costs without receipts as proof for the services rendered and the amount claimed. Luckily, the Applicant tendered the additional documents (receipts).

To support her argument, the Applicant's counsel referred the Court to the case of **Salehe Habib Salehe v Manjit Gurmukh Singh & Mohinder Gurmukh Singh, Reference No.7 of 2019, High Court of Tanzania (Land Division) at Dar es salaam (unreported) at page 10**. It would be unfounded for the Court to decline to entertain decree holder's Bill of Costs simply because no EFD receipts were issued. This was also held in the case of **M/S Buckreef Gold Company Ltd v**

Taxplan Associates Ltd, Misc. Commercial Reference No. 3 of 2017. Another relevant case is **Edna Chambiri v Tanzania Electric Supply Co. Ltd Civil Reference No. 04 of 2018, High Court of Tanzania (Land Division) at page 9**, the ruling was delivered on 06/03/2021, where it was held that:

"And since the scales are prescribed then proof in terms of receipts (of whatever kind) would not be necessary as the scales are already statutorily provided for. Prudence is evident that proof would only be required where a party claims costs above the statutory scale."

Advocate Elisia Paul submitted that receipts are not necessary unless one has charged beyond the scale provided in the law. Moreover, they have tendered the receipts to prove the claim. I need not to repeat what I have stated herein above, it is prudence and logic that proof of services rendered, and the amount of money claimed as instruction fee is the receipt(s). Thus, in practice it is crucial to tender the receipts (evidence) before the Taxing Officer to justify the claim.

The Respondent's counsel started his submissions by referring the Court to its position when determining reference as it was underscored in **Arthur v Nyeri Electricity (1961) EA at page 492** and the Court

held that it is well known that the discretion of the Taxing Master will only be very rarely interfered with when there is error on principle. He argued that basing on the above case, the discretion of Taxing Officer should not be easily interfered with. It is apparent that the present case is governed by the GN No. 264 of 2015 and not the case of **Arthur v Nyeri Electricity (1961) EA**. On this point again, I should say that the Taxing Officer's discretion should be exercised judiciously. It means the discretion is not unfettered. In the case at hand, certainly the demand for EFD receipts was unreasonable.

The learned counsel for the Respondent turned to a question whether there is any principle that the Taxing Officer breached that warrant this Court to interfere with his decision. Mr. Eric Akaro, Respondent's counsel argued that looking at para 2 of the Applicant's Affidavit, the Applicant depones that they sought leave to file additional documents to prove his claims. The Respondent's counsel strongly opposed moving the District Land and Housing Tribunal in such manner. He submitted that Order 58(1) of the Advocates Remuneration Order, 2015, GN. No. 264 of 2015 is not applicable in the circumstances.

Mr. Akaro went further submitting that since the Applicant requested himself to bring proof including that of the instruction fee, the standard

proof is the production of the EFD receipts. He backed his submission with the case of **Prof. Emmanuel A. Mjema v Managing Editor of Dira ya Mtanzania Newspaper and 2 Others Refence No. 7 of 2017, High Court of Tanzania, Dar es Salaam Registry at Dar es salaam (unreported) at page 5**, where it held inter alia that:

"It follows therefore that since advocates are required by the law to issues EFD receipts upon payment for services rendered, claims to such payment shall be proved by submission of EFD receipts as evidence."

The Respondent's counsel argued that there was no principle breached by the taxing officer. Moreover, the Taxing Officer in his ruling at page 4 while stressing on the need for EFD receipt, he cited **Prof. Mjema's case**. I do not disagree with the Respondent's counsel submission that the lower Courts/Tribunals are bound by the decision of the higher courts in the hierarchy. And hence the Taxing Officer at the District Land and Housing Tribunal was bound by the decision in **Prof. Mjema's case**. The latter's decision was made on 04/04/2019 and the DLHT ruling was delivered on 04/09/2020. He argued that the cases cited by the Applicant's counsel came after **Prof. Mjema's case** and the DLHT's decision. They are also distinguished. This argument is baseless

because the case of **Salehe Habib Salehe v Manjit Gurmukh Singh & Mohinder Gurmukh Singh, Reference No.7 of 2019, High Court of Tanzania (Land Division) at Dar es salaam (unreported) at page 10** was decided on 20/4/2020 before the District Land and Housing Tribunal decision (delivered on 4/9/2020).

While it is true that the interference with Taxing Officer is justifiable where the scale has been overstretched and where there is a principle breached, I am of the view that the Taxing Officer's demand for EFD receipts in the premise of the present case is unreasonable and may lead to miscarriage of justice.

The Respondent's counsel argued that the receipts were attached without the notice to produce document being attached. Thus, the receipts were left hanging. This is a minor inconsistency because the trial tribunal records are clear on this.

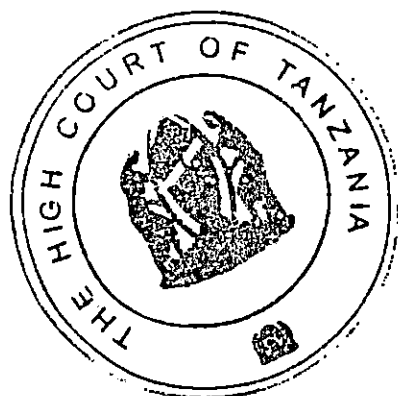
Regarding the reliefs, unlike the Applicant who prayed for the Taxing Officer's decision be quashed and set aside, and the item No. 1 (instruction fee) be granted, the Respondent prayed that the application be dismissed, and the Court invoke Order 48 of GN No. 264 of 2015 to tax off the entire Bill of Costs and further order that the Applicant is not entitled to costs of such taxation.


The EFD receipt is not a mandatory requirement under the Advocates Remuneration Order/Rules GN of 2015. What is required is some sort of evidence to show that such costs were incurred not necessarily EFD receipts. Numerous court decisions have held that as it was stated in **Salehe Habib Salehe v Manjit Gurmukh Singh & Mohinder Gurmukh Singh, Referen No. 07 of 2109, Hight Court of Tanzania (Land Division) at Dar es Salaam, (unreported).**

I find this application to have merit. The Taxing Officer was wrong to tax off the whole of item No. 1 on instruction fee for want of EFD receipts. Therefore, the application is granted. The Ruling of Mangure D.W., (Taxing Officer) is varied to the extent that item No.1 is now granted with costs.

It is so ordered.

DATED at TANGA this 17th Day of September 2021.




U. J. AGATHO
JUDGE
17/09/2021

Date: 17/09/2021

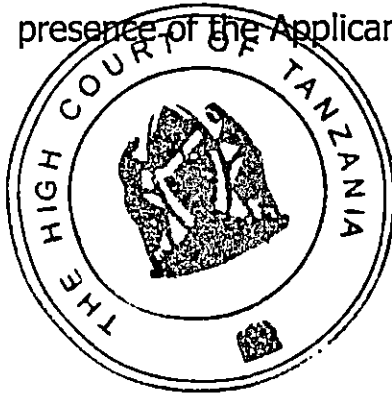
Coram: Hon. Agatho, J

Applicant: Present

Respondent: Present

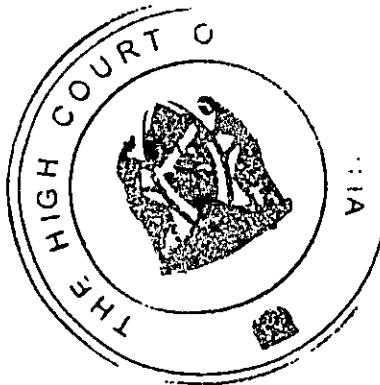
B/C: Zayumba


Court: Judgment delivered on this 17th day of September, 2021 in the presence of the Applicant, and the Respondent.




U. J. AGATHO
JUDGE
17/09/2021

Court: Right of Appeal fully explained.




U. J. AGATHO
JUDGE
17/09/2021