

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL REFERENCE NO. 4 OF 2021

(C/F Taxation Cause No. 14 of 2020 originating from Misc. Civil Application No. 1 of 2018 & Misc. Civil Application No. 57 of 2019, Original RM Civil Case No. 61 of 2017)

MBAYO OLOITITO NAMAICOAPPLICANT

VERSUS

PHOENIX OF TANZANIA ASSURANCE COMPANY LTD..... RESPONDENT

RULING

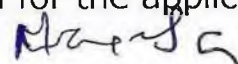
17.05.2022 & 28.06.022

N.R. MWASEBA, J.

The applicant, **Mbayo Oloitito Namaiko**, having been dissatisfied with a ruling of the Deputy Registrar who taxed off some of the items under the bill of costs in Taxation Cause No. 14 of 2020, preferred the present application for the court to vary the decision of the taxing master in different items that were taxed off.

The application was brought under Order 7 (1) and (2) of the Advocate Remuneration Order, 2015, GN No. 263 of 2015.

The application was disposed of by way of Written submission whereby Mr. Gwakisa K. Sambo, Learned Counsel appeared for the applicant. The

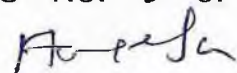


respondent never appeared in court despite of being duly served by the court process Server, Mr. Allan Reuben Mollel. According to his affidavit, the principal officer of the respondent namely Devota received the summons and signed it. So, the matter proceeded ex-parte against him.

Supporting his application, Mr. Sambo had four major claims against the taxing officer in Taxation No. 14 of 2020. **Firstly**, the act of the taxing officer to tax off all the transport costs incurred by the applicant's advocate for want of a receipt (See item No. 2,3,4,8, 12, 16, 20, 22, 24, 26, 28, 30, 32 and 34). He added that, it was wrong for the taxing officer to demand EFD receipt while an advocate was using his private car. He supported his point by citing the case of **Tanzania Rent a Car Limited Vs Peter Kimuhu**, Civil Reference No. 9 of 2020 (CAT-Unreported).

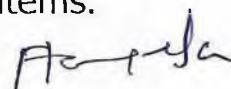
Having revisited the ruling of the taxing master this court has noted that the taxing master did not award the decree holder (applicant) transport costs incurred by the advocate to attend the case in court on the ground that no receipts were attached.

However, it was held in a case of **Hotel Travertine Ltd Vs National Bank of Commerce**, Taxation Civil Reference No. 9 of 2006 (Unreported) that:



*"This claim too was taxed off because there was no receipt attached. That amount I think is reasonable and 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.**"* (Emphasis added)

I will be guided with the above decision. The counsel for the applicant told the court that he had been using private car to come to court. That means it is difficult to account with receipt. The taxing master distinguished the above case to the present case that it was decided prior to introduction of EFD receipts. He said nowadays if you buy fuel, you are given a receipt. With due respect, this court will not buy the taxing officer's idea since the Court of Appeal decision or the law cannot be vacated or distinguished just because the life standard has changed. The counsel has charged Tshs 20,000/= for transport from his office to court the amount which is reasonable. It is not disputed that the counsel did attend before the court on the mentioned dates. Thus, for the said reasons, I vary the order of the taxing master of taxing off items 2,3,4,8, 12, 16, 20, 22, 24, 26, 28, 30, 32 and 34. Therefore, a total amount of Tshs. **280,000/=** is taxed on the above items.



Secondly, he challenged the act of the taxing master to tax off item No. 6, 10, 14 and 18 which are the costs incurred by the applicant for lunch and breakfast as he was coming from Namanga in the morning and return in the evening to attend his cases. Denying the said costs means the taxing master failed to exercise his power vested to him by Order 12 (1) of GN 264 of 2015. He cited the case of **Alfayo Tingisha Vs Simon Laanyumi**, Misc. Civil Application No. 47 of 1998 where the court insisted the taxing officer to be satisfied that the costs was incurred and it was necessary to incur them. So, if the applicant did attend his case, it means he incurred costs.

Regarding the costs for food incurred by the applicant while he was attending his case, the same is hereby taxed off as it was done by the taxing master for want of proof.

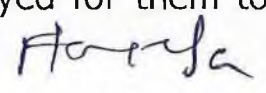
Thirdly, he faults the taxing master's act of taxing off attendance costs (item No. 7, 11, 15, 19, 21, 23, 25, 27, 29, 31, 33, and 35) for the reasons that they are included in instructions fees while they are two different things. He added that instruction fees are governed by **11th schedule item (m) (1) and (2) of GN 263 of 2015** while attendance costs are governed by **8th schedule item No. 3 (A) of GN 263 of 2015**. To support his argument, he cited the case of **First**



Word Investment Court Brokers Vs Backreef Gold Company Limited, Misc. Commercial Reference No. 1 of 2019 (HC-Unreported).

Regarding the attendance costs this court do agree with the applicant's counsel that it was supposed to be awarded to the applicant as the same is not inclusive in instruction fees and even the provisions governing attendance costs and the instruction fees are not the same. The attendance costs are governed by **8th schedule item No. 3 (A) of GN 263 of 2015**, where by attendance for mention is 50,000 while hearing is 100,000/= so, the applicant is hereby granted Tshs. **600,000/=** as attendance costs for items No. 7, 11, 15, 19, 21, 23, 25, 27, 29, 31, 33, and 35.

Fourthly, the counsel for the applicant alleged that item No. 36 and 37 which was for drawing written submissions and for fair copying were taxed off by the taxing master for the reason that they are included under instruction fee. He submitted that the said costs are governed by **item No. 2 (1) (c) of the 8th schedule, GN 263** of 2015, which means they are different from the instruction fees. More so, as the law limit the instruction fees to the tune of 1,000,000/= the said cannot cover the costs under item No. 36 and 37 and prayed for them to be taxed.



In the end he also prayed for the items that were taxed off to be taxed together with the costs of this reference.

As for Item 36 he prays for Tshs 1,144,200/= and for item No. 37 the applicant prays for Tshs. 945,000 being the costs for fair copying of written submission as stipulated in **item No. 2 (1) (c) of the 8th schedule, GN 263 of 2015**. Those documents have not been attached to this application for proof. Therefore, the same is hereby taxed off for want of proof.

The applicant also alleged that the taxing master denied them costs for attending taxation cause No. 14 of 2020 since they were taxed 1/6 of the amount claimed. He avers that in this case the taxing master could have taxed more than what he taxed and that he was supposed to exercise his duty judiciously. So, he prayed for the court to reverse the decision of the taxing master.

This court noted that the taxing master was right however, since the amount taxed to the applicant is no longer 1/6, they deserve to be awarded costs of taxation cause no. 14 of 2020.

In respect of the cost for attending taxation cause, and the instruction fees to prepare files and pursue this taxation cause, being guided by **The Advocate Remuneration Order, 2015** under the 11th schedule

item 1(m)(ii) I grant the applicant the instruction fees of the taxation cause to the tune of Tshs **500,000/=**.

In respect of filling fees for the taxation cause, I award the applicant the filling fee of all documents to the tune of Tshs **60,000/=** as it has been receipted.


Regarding the transport cost from the office to Court and back for filing and adjudicating the taxation cause, I award the applicant a total of Tsh **100,000/=**.

In the end result, this court has awarded the applicant Tshs 1,540,000/= which was taxed of by the taxing master. Consequently, the entire bill of cost is taxed at the tune of Tshs. **2, 682,000/=** including the amount already awarded by the taxing officer.

Ordered accordingly.

DATED at **ARUSHA** this 28th day of June, 2022.




N.R. MWASEBA

JUDGE

28.06.2022