

**IN THE HIGH COURT OF TANZANIA  
(MAIN REGISTRY)  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 15 OF 2021**

**ZITTO ZUBERI KABWE.....1<sup>ST</sup> APPLICANT**

**SALIM ABDALLA RASHID BIMANI.....2<sup>ND</sup> APPLICANT**

**JORAN LWEHABURA BASHANGE.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL.....RESPONDENT**

**RULING**

**20 April & 19 July 2022**

**MGETTA, J:**

By way of chamber summons supported by an affidavit sworn by Loveness Denis, the applicants namely Zitto Zuberi Kabwe, Salim Abdalla Rashid Bimani and Joran Lwehabura Bashange, filed this taxation reference challenging the decision passed on 5/3/2021 by a taxing master against them in Bill of Cost No. 10 of 2019 Main Registry following an order for cost made in Misc. Civil Cause No. 31 of 2018. The complaint is based on the fact that the bill of cost was granted against the law; and, the objections raised and defences presented by the applicants during the hearing were not considered.

When the matter was called on for hearing, by consent of the counsel namely Ms. Loveness Denis, the learned advocate for the applicants and Ms. Stella Machoke, the learned Principal State Attorney for the respondent, this matter was disposed of by way of written submissions.

At the very outset in her submission, Ms Loveness averred that the applicants request this court to examine and interfere with the impugned decision of the taxing master dated 05<sup>th</sup> march, 2021. As per paragraphs 4, 5 and 6 of the attached affidavit, the grounds for the application have been outlined, that **one**, the taxing master exercised his discretion to award bill of cost presented by the respondent in contravention of the law and did not consider the objection and defence presented by the applicants objecting the claims of expenses and cost for want of explanation. **Two**, that the taxing master awarded costs to the respondent on assumption that the government is entitled to costs and overlooked the respondent's duty to prove the said cost and expenses claimed in the Bill of cost. **Three**, that the taxing master disallowed for more than one-sixth of the total amount of bill of cost and the bill of cost was not rejected contrary to **Order 48 of the Advocate Remuneration Orders, 2015.**

As for ground one above, Ms Loveness stated that the taxing master taxed Tzs 5,377,700/= out of Tzs 79,000,000/= of the Bill presented to the court contrary to **Order 48 of the Advocate Remuneration Orders, 2015** which states that when more than one - sixth of the total amount of the bill of costs exclusive of the fees is disallowed, the party presenting the bill for taxation shall not be entitled to costs of such taxation provided that at discretion of the taxing master any instruction fee claimed may be disregarded in the computation of the amount taxed of that fee in the computation of one-sixth.

In her elaboration, she stated that the respondent presented the bill of cost of Tzs 79,000,000/= and one- sixth of the total amount of the presented bill is Tzs 13, 166,666.6 in which the taxing master granted only Tzs 5,377,000/=. Therefore, the respondent was not entitled to the cost presented in the bill of cost No. 10 of 2019. To substantiate her submission, she referred to the case of **Regional Commissioner of Shinyanga Versus Bernard Msonga Sizasiza**, Civil reference No. 01 of 2019 (High Court) (Shinyanga) (unreported) and the case of **Espicius Matungwa Bamwenzaki Versus Biharamuro Women Saccos & two Others**, Civil Reference No.08 of 2020.

On the second ground, that the taxing master failed to consider the evidence and objections in granting the aggrieved cost. She averred that regarding **Group "A"** (item 1 & 2 of the Bill of cost) with the amount of Tzs 3,577,700/= being the cost for transport for two officers from Dodoma was unnecessary. The attendance of those officers were not certified as necessary witnesses by the court as required by **order 60 (2)**. If preliminary objections which were pure points of law were heard, the taxing master could not have arrived at that wrong decision.

As regard to **Group B** (item 5, 6, 7, 8 and 9 of the Bill of Costs) Tzs 600,000/= was taxed for drawing documents and making copies. It was her observation that it was against the law. By virtue of **Order 4(1) (a), (b) and (h) of the Office of the Solicitor General (Establishment) Order, 2018**, the Solicitor General and State Attorneys are employed and paid monthly salaries, monthly allowance, pensions to represent and work for the government in all civil cases. Therefore, no cost should be awarded in that regard. She referred to the case of **Commissioner of Lands Versus Odinga Odinga** [1972] EA 125 at page 126-127.

As regard to **Group C** (item 12 of the Bill of Cost for attendance for mention and ruling), she averred that it was improper to allow a

claim of Tzs 100,000/= without evidence to substantiate the claim. Likewise, item for meal and refreshments should not be taxed. She referred to case of **Idd Nzimamo Versus National Bank of Commerce** [2002] TLR 414.

Responding to the submissions above, Ms Stella Machoke stated that the respondent original claim was Tzs 79,000,000/= out of which when put under the one-sixth then it came up to Tzs 13,166,666.6 out of which the court granted Tzs 5,377,000/= and parties agreed on the amount. She added that the respondent deserved to be awarded cost as any litigants. The fact that there is salary and various allowances is not viable.

As regard to the complain that the taxing master did not consider evidence and objections, she defended that it is a fallacy as otherwise it would have been difficult to hear and determine the application and it would have brought the matter of the right to be heard. She concluded that the matter brought is not above one sixth, each party did present its case and the respondent like any other litigants deserved to costs

In rejoinder Ms. Loveness re-echoed her submission in chief but with rectification. That the amount claimed by the respondent in Bill of Cost was Tzs 79,000,000/=. The taxing master allowed only Tzs

5,377,700/= and disallowed Tzs 73,622,300/=. Order **48 of the Advocates Remuneration Order, 2015** provides that party presenting bill for taxation shall not be entitled to cost of such taxation when more than one sixth of the total amount of bill of costs exclusive of court fees is disallowed. She stressed that Tzs 79,000,000/=: the bill presented by the respondent for taxation is exclusive of court fees because the respondent (Government) is exempted from payment of court fees.

Having heard the parties and gone through the records, the main issue for determination is whether the Bill of cost Tzs 5,377,700/= was granted according to the law. I find it necessary to point at this very instance that it is an established principle regarding costs that this court will refrain from interfering with the amount taxed by the taxing master unless during the grant of the said amount, he based on a wrong principle. See the case of **VIP Engineering and Marketing Ltd versus Citibank Tanzania Limited**, Civil Application No. 24 of 2019, (CA) (Dar es Salaam) at pages 9 to 10 subscribed to the cases of **Rahim Hasham Versus Alibahai Kaderbhai** (1938) 1 T.L.R.(R) 676, **Premchand Raichand Versus Quarry Services** [1972] EA. 162 and

that of **the Attorney General Versus Amos Shavu**, Taxation Reference No. 2 of 2000 (unreported).

On the second ground that the taxing master failed to consider the evidence and objections in granting the aggrieved cost, she referred to **Group "A"** of costs amounting to Tzs 3,577,700/=. I find this ground as baseless as the applicants have not disputed the fact that the said costs are for the attendance of the said witnesses in court proceedings for hearing of the preliminary objection, preparing counter affidavit, reply to the petition and hearing of the main application (see page 15 of the Ruling). At page 16, the second paragraph of the ruling, there is verification that the disputed Tzs 3,577,700/= were proved by secondary evidence (vouchers). The submission that the said witnesses were not necessary as it was for hearing of preliminary objection and is not backed by any law.

As regard to **Group C** (item 12 of the Bill of Cost for attendance for mention and ruling), I agree that the claim was not proved. However, the records (typed proceedings) of this court in Misc. Civil Cause No. 31 of 2018 at pages 1 and 36 indicate that the respondent attended on the ruling date on 14<sup>th</sup> January, 2019 and on the mention

date. Both parties were absent. Therefore, the award of Tzs 50,0000/= was unsubstantiated.

As far as **Group B** (item 5,6,7,8 and 9 of the Bill of Costs) is concerned, Tzs 600,000/= were taxed for drawing documents and making copies. Considering the principle of fairness and equality of parties before the court, this complaint is baseless. By virtue of **sections 3(1) and 12 of the Government Proceedings Act, CAP 5 R.E 2019**, it is quite clear that whereas the Government can be liable like any private person, equally, it is also entitled to compensation like any private person in civil litigation including entitlement for compensation of cost incurred by its attorneys in the course of prosecuting cases and the amount should be reimbursed in the government revenue. This will reduce unnecessary proceedings against the government. Further, **the Advocate Remuneration Order, G.N No. 263 of 2015** is made under the **Advocate Act, CAP 341 R.E 2022**. Under **section 3 of the Advocate Act**, the Act applies even to all officers in the Attorney General, the Director of Public Prosecutions, the Solicitor General, Parliamentary Draftsmen, State Attorneys and any person duly qualified in the Office of the Attorney General, the National Prosecutions Service and the Office of the Solicitor General. Therefore, it



implies that the government attorneys from the afore mention Offices are covered by GN No. 263 of 2015 and are entitled to cost for making copies, drawing documents and time and energy spent in the proceedings like any other private advocate.

Now regarding the complain that the Taxing master disallowed for more than one-sixth of the total amount of a bill of costs and the bill of cost was not rejected contrary to **Order 48 of the Advocate Remuneration Orders, 2015**, I find it with merits. From the facts deponed and argued by the parties, it is undisputed that the respondent filed a Bill of Cost of Tzs 79,000,000=, among which the taxing master allowed only Tzs 5,377,700/= and disallowed 73,622,300. It is equally undisputed that the government is exempted from payment of court filing fees. One-sixth of the claimed amount is TZS 13,166,666/=, the disallowed amount is Tzs 73,622,300 which is more than one-sixth of the total amount of the bill of cost. **Order 48 of the Advocates Remuneration Order, 2015**, provides and I quote

*"When more than one-sixth of the total amount of a bill of costs exclusive of court fees is disallowed, the party presenting the bill for taxation shall not be entitled to the costs of such taxation: Provided that,*

*at the discretion of the taxing officer any instruction fee claimed, may be disregarded in the computation of the amount taxed of that fee in the computation of the one-sixth"*

By referring to the above quoted provision, it is obvious that the bill of cost which was denied (disallowed) is more than one -sixth of the amount claimed. Hence, the respondent was precluded from being awarded any costs. Therefore, awarding Tzs 5,377,700/= to the respondent contravened the quoted provision and it is outside the outlined principle of awarding bill of cost prescribed above. The allegation that the applicants agreed with the cost taxed above as stated by Ms Stella Machoke is not supported by the records availed to this court. Thus, it is unreliable allegation.

By taxing Tzs **5,377,700/=** to the respondent, while the disallowed amount is Tzs **73,622,300/=** which is more than one-sixth of the total amount of the bill of cost which is Tzs **79,000,000/=** and taxing **Tzs 600,000/** without proof of cost for attendance justify that the taxing master exercised his discretion by basing on a wrong principle.

In fine, I find that this application has merits and therefore is allowed. The decision of the taxing master dated 5<sup>th</sup> March, 2021 is accordingly quashed and set aside. Each party has to bear its own costs.

It is so ordered.

**Dated at Dar es Salaam** this 19<sup>th</sup> day of July, 2022.



**J.S. MGETTA  
JUDGE**

**COURT:** This ruling is delivered today this 19<sup>th</sup> day of July, 2022 in the presence of Mr. Hangi Chang'a, the Principal State Attorney for the respondent, but in absence of the applicants and or their advocate, Ms Loveness Denis, for reasons known to themselves.



**J.S. MGETTA  
JUDGE  
19/7/2022**