

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

CIVIL REFERENCE NO. 02 OF 2021

MOHAMED ATHUMANI.....APPLICANT

VERSUS

1.THE REGISTERED TRUSTEES OF BARAZA

KUU LA WAISLAM(BAKWATA)

2.PONSIANA KASHUKU

3.JUMA SAIBU

.....RESPONDENTS

(Arising from the decision of High Court of Tanzania at Dodoma)

(E.J. Nyembele-Deputy Registrar)

Dated 16th June, 2021

In

Taxation Cause No.02/2021

RULING

09thMay&8thJuly,2022

MDEMU, J:.

The Applicant herein, Mohamed Athumani asked this Court to examine ruling of the Taxing Officer in Taxation Cause No. 02 of 2021(Nyembele, Deputy Registrar) dated 16th June, 2021. The application is under Rule 7(1) and (2) of the Advocates Remuneration Order, 2015 (GN No. 264 of 2015). It is supported by an affidavit sworn by the Applicant. The Respondents opposed the application in their counter affidavit.

According to the record, the bill of costs fetched the sum of Tshs. 6,317,000/=being costs for Land Appeal No. 33/2017 in this Court, Misc. Application No. 92 of 2017 and Application No. 186/2015 in the District Land and Housing Tribunal. The Taxing Officer taxed off some items and awarded only Tshs. 1,097,250/=. Aggrieved by this sum, the Applicant preferred this reference seeking the Court to grant the following orders:

- 1. That, the Taxing officer acted injudiciously in her ruling in taxing off most of the Applicant's bill of costs for the matter which was heard in the High Court and in not adhering to the principles and the law on assessing instruction fees.*
- 2. That, the taxing officer acted injudiciously in her ruling in completely refusing to tax the proceedings of the matter when it was in the District Land and Housing Tribunal as well as costs incurred by the Applicant in paying the Tribunal Broker who carried out the eviction order of the Tribunal.*

3. *That, the amount or the percentage granted by the Taxing Officer for arguing the Bill of costs is just too low and far from being reasonable.*
4. *That, costs of this reference be provided for.*

The Applicant was represented by Mr. Paul Nyangarika, learned Advocate whereas the Respondents enjoyed the services of Mr. John Kidando, learned Advocate also.

Mr. Nyangarika submitted among other things that, the general principle is that, the decision of taxing officer cannot be easily interfered by the High Court unless there are exceptional grounds to warrant such interference. He argued that, in Land Appeal No. 33 of 2017, its bill of costs had eight items out of which, there were instruction fees totalling Tshs.2,000,000/= paid in two instalments. It was his submissions further that, the Taxing officer taxed off half of the instructions fees wrongly depending on the Respondents' submission that instructions fees are based on Schedule 11, Item 1 (i) of the Advocates Remunerations Order, GN. 264 of 2015 which requires the Taxing Officer to tax instructions fees reasonably but not exceeding Tshs. 1,000,000/=while disregarding the Applicant's argument that, the Taxing officer is supposed to tax instructions fees reasonably but not less than Tshs. 1,000,000/=.

He said that, the Taxing officer was too quick to accept submissions made by Respondents and thereby failing even to exercise discretion given to her by the law due to the fact that, the case was tough and involving as it took the Advocate more than a year in the High Court prior to its finalization. To him, this alone would have guided her to the truth that Tshs. 1,000,000/= was just little for a year work. It was his submissions further that, the Taxing officer quoted a wrong Rule in her decision that Item 1(i) of the 11th Schedule to the Advocates Remunerations Order, 2015 was wrongly deployed as it does not relate to appeal rather prerogative orders.

On the percentage given for arguing bill of costs, he submitted that, the percentage given as fees amounting to Tshs. 45,000/= was quite unreasonable in the circumstances where there were appearances, written submissions, rejoinder and attending court sessions for ruling. He added that, 10% would meet the actual costs. Therefore, the Taxing Officer was supposed to tax broker's costs in the DLHT since there was no any other means of refunding such costs to the Applicant and no law prohibits filing bill of costs arising from a case heard by the Tribunal. He argued that, going back to the DLHT after the matter was determined by

this Court, the Applicant could have delayed in filing bill of costs prescribed by the law.

It was his further submission that, section 33(3) of the Land Courts (Land Disputes Settlement) Act cited by Taxing Officer deals with execution and not costs. He said that, he is alive with the position that, the DLHT is capable of taxing bill of costs but prayed that, Taxing Master be ordered to tax bills on proceedings in the trial.

In reply, the Respondents adopted their counter affidavit and submitted among other things that, the Applicant should only be entitled to instruction fees for appeals as prescribed by the scales in the Advocates Remunerations Order of 2015. Since the bill were from an appeal, he said that, the proper scale was Tshs. 1,000,000/= as prescribed under 11th Schedule, item 1(I) of the Advocates Remuneration Order, 2015 which deals with appeals to the High Court and not item 1(i) as said by the Applicant. He said, there was a slip of pen which didn't prejudice the Applicant.

On the issue that the Taxing Officer didn't consider that the case was tough and involving, he said that, these reasons were never advanced in the submissions in support of the bill of costs. He argued further that, it is well established principle that, bill of costs is not meant to enrich the

successful party as stated in **Wambura Chacha vs. Samson Chorwa [1973] LRT No. 4.**

On the question of rejection of the bill of costs for the District Land and Housing Tribunal, he averred that, the Taxing Officer was correct in rejecting the said bills because there is no order in the judgement in Land Appeal No. 33 of 2017 ordering for costs. On this, he cited the case of **Nsobi Mwaipungu v. Curtis Mwabulanga, Land Reference No. 3 of 2017** (unreported). Secondly, there is no law which bars filing bill of costs when there is an appeal pending. He cited Order 4 of the Advocates Remunerations Order, 2015 which requires a decree holder to lodge an application for taxation by filing bill of costs within sixty days from the date of an order awarding costs. He also cited the case of **Rose Mkeku (the Administratrix of the estate of the late Simon Mkeku) vs. Parvez Shabbirdin, Misc. Land Application Case No. 89 of 2021** (unreported).

It was his further submissions that, the Applicant herein ought to have filed his bill of costs in the District Land and Housing Tribunal within the prescribed time limit as an appeal to this Court is not a bar to litigants to file their bills.

In rejoinder, Mr. Nyangarika, after having reiterated his submissions in chief added that, since there is no reply regarding percentage given by Taxing Officer for arguing bill of costs, then the Respondent be presumed to have conceded increase in the percentage.

I have considered both parties' submissions and the records available as well. The issue before me is whether bill of costs was improperly taxed. First of all, it is a settled principle of taxation that, the winner must be reimbursed all costs legally incurred. See the case of **Premchand Raichand Limited and Another vs. Quarry Services of East Africa Limited and Another (1972) E.A 162**. However, it should be noted that, costs are not awarded to punish the looser and enrich the winner. See the case of **Wambura Chacha** (supra).

That being the law in taxation, it is clear that, instruction fees its purposes is to compensate adequately an Advocate for the work done in preparation and conduct of a case and not to enrich him. Taxing officer in determining the quantum payable as instruction fees, must consider factors such as the amount of work involved, complexity of the case, time taken including attendances, correspondences, perusals and authorities or arguments. It be underscored that there is no requirement to prove payment of instruction fees by tendering any receipts. This was the

position in the case of **Tanzania Rent A Car Limited vs. Peter Kimuhu, Civil Reference No. 9 of 2020** (unreported).

The immediate question now is whether the amount taxed was justified. It is a general rule that, award of instruction fees is within the discretion of a taxing officer. The Court will always be reluctant to interfere unless the Taxing Officer exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong considerations. In the instant reference, the Applicant claimed Tshs. 2,000,000/= but the Taxing Officer awarded him 1,000,000/= in terms of 11th Schedule to the Advocates Remuneration Order, 2015 prescribing Tshs. 1,000,000/= being the maximum amount the Advocate may charge as instruction fees. However, in paragraph (m) sub-para(aa), the Taxing Master may increase the amount guided by the nature, complexity of the case and time taken to finalize the matter. This was the position of the Court of Appeal in the case of **Amos Shavu vs. Attorney General, Taxation Reference No. 2 of 2000** (unreported).

In its decision, the Taxation Officer didn't consider other factors provided for under paragraph (m), sub paragraph (aa) of the Order(supra) and the case of **Amos Shavu** (supra). That notwithstanding, the Applicant is the one who was to prove the complexity of the matter; the

case being involving and time spent in Court in pursuing the matter. In the records, all these factors were not adduced during the determination of the taxation cause. On this, in the case of **Antony Ngoo and Davis Antony Ngoo vs. Kitinda Kimaro, Civil Application No. 25 of 2014** (unreported) it was held that: -

"The Court cannot make out a new case altogether and grant relief neither prayed for in plaint nor flows naturally from the grounds of claims in the plaint"

From the foregoing, it is obvious that the taxed sum of Tshs. 1,000,000/= was proper and lawful. There are no reasons adduced by the Applicant which could have convinced the Taxing Master to tax above the provided amount by the law. Furthermore, the Applicant complained on wrong citation of 11th schedule instead of citing 1(l) Taxing officer cited item 1(i). I have perused the ruling which is hand written where item 1(l) of the Advocates Remunerations Order of 2015 is mentioned. As observed, that was a typing error.

On the issue that the Taxing Officer was also to tax bill of costs in respect to the decision delivered by the DLHT, I subscribe to the observations made by Mr. Kidando that, there is no law restricting taxation where an appeal lies. Item 4 of the Advocates Remunerations Order

provides that, a bill of costs shall be filed within sixty days from the date of the order awarding costs. It states: -

"4. A decree holder may, within sixty days from the date of an order awarding costs, lodge an application for taxation by filling a bill of costs prepared in a manner provided for under order 55".

As stated, once the bill of cost is filed, it must be taxed unless the Court resolves to wait the outcomes of appeal. There is no requirement restricting the taxing officer to refrain from taxing on the ground that an appeal has been preferred.

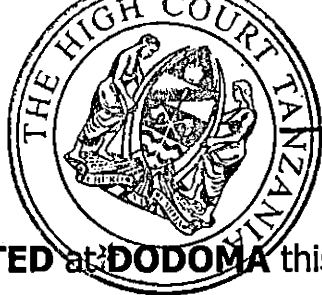
Furthermore, bill of costs are proceedings which, by their nature, are instituted after the judgement or the ruling is pronounced. Failure to file bill of costs within sixty days renders it time barred. Therefore, the Applicant ought to have filed his bill of costs at the District Land and Housing Tribunal even when there was a pending appeal to this Court and that, after taxation, he was to go ahead and enforce the award unless this Court stays execution. In addition, costs incurred when the matter was before the District Land and Housing Tribunal ought to have been filed in the Tribunal because the Applicant did not provide evidence showing that,

the judgement of this Court on appeal had awarded him costs before it and that of the District Land and Housing Tribunal.

On the question of percentage given in arguing bill of costs, it is my considered view that, 5% was enough taking into account a brief three pages' written submissions he made in support of his application with neither law nor case law annexed supporting the application which could have convinced the Taxing Master to observe and consider time and research conducted on the matter.

Owing to the foregoing, I hereby find no merits in the Applicant's application against the impugned ruling of the Taxing Officer. I thus dismiss this reference with costs.

It is so ordered.



Gerson J. Mdemu
JUDGE
08/07/2022

DATED at DODOMA this 8th day of July, 2022.



Gerson J. Mdemu
JUDGE
08/07/2022