

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

CIVIL REFERENCE NO. 02 OF 2020

(Originating from Taxation Cause No. 08 of 2019 in the High Court
of Tanzania, at Mbeya)

TAFISA GENERAL ENTERPRISES LTD.....APPLICANT

VERSUS

TANZANIA NATIONAL ROADS AGENCY.....RESPONDENT

RULING

Date of last Order: 23.11.2021

Date of Ruling: 18.02.2022

Ebrahim, J.

The applicant herein filed the instant reference application calling upon this court to intervene, peruse, quash and set aside the ruling of the taxing master issued in Taxation cause No. 8 of 2018 dated 7th September, 2020. He also prayed for any other orders and costs. The application was accompanied by an affidavit sworn by Oscar Rwegalulila Tafisa, the managing director of the applicant. The respondent objected the application by

filing a counter affidavit sworn by Mr. Usaje Mwambene, learned State Attorney.

Brief facts of the case are that: the applicant filed Miscellaneous Civil Application No. 10 of 2016 before this court seeking for injunctive reliefs against Tanzania National Roads Agency (the respondent) and Diamond Trust Bank Tanzania Ltd (which is not a subject of this reference application). On 30/04/2019 the said application was dismissed with costs. The respondent (TANROADS) filed a bill of costs before the Taxing Master through Taxation Cause No. 8 of 2019, claiming a total of Tshs. 16,300,000/= against the applicant. The bill was taxed at the tune of Tshs. 5,200,000/= and the rest were taxed off. The applicant was dissatisfied by the taxation, he thus challenged it by filing the instant reference.

When the application was called for hearing Mr. Daniel Muya, learned advocate appeared for the applicant whereas Mr. Joseph Tibaijuka, learned State Attorney appeared for the respondent. The application was heard by way of written submissions, parties duly filed their respective submissions.

In support of the application, Mr. Muya prayed to adopt the affidavit supporting the application and continued to argue that; the taxing master failed to exercise the discretionary powers of taxation judiciously. He argued that according to Order 48 of the Advocates Remuneration Order, 2015 G.N. No. 264 of 2015 taxing officer was supposed to disallow the total bill of cost after taxing off more than one-sixth of the total bill presented. Mr. Muya contended that, the taxing master ought to have given justified reasons of non-observance to the Law i.e Order 48. He cited the cases where the bill of costs was disallowed in total after taxing off more than one-sixth of the total bill presented. These cases are; **John Momose Cheyo v. Stanbic Tanzania Limited**, Commercial Reference No. 72 of 2018 High Court of Tanzania, Commercial Division and **The Regional Commissioner of Shinyanga v. Bernard Msonga Sizasiza**, Civil Reference No. 1 of 2019, HCT at Shinyanga (both unreported).

Another complaint argued by Mr. Muya for the applicant was that the respondent being the executive agency was not supposed to claim for instruction fee. He contended that the respondent was represented by a public servant who is paid the

salary and he did not prove if she paid instruction fee. To bolster his argument, he prayed for this court to be persuaded by the decision in the cases of **Zuberi v. The Returning Officer and Another [1973] E.A 33** and **The Inspector General of the Government v. Godfrey Magezi**, Taxation Reference No. 1 of 2016, East African Court of justice, at Arusha.

Another complaint argued by Mr. Muya for the applicant was that the taxing master did not observe to the **Advocate Remuneration Oder, 2015** in taxation of costs. He gave an example of order 46 which requires attendance to be awarded Tshs. 50,000/= however, the respondent was awarded Tshs. 300,000/= without justification. Mr. Muya therefore, urged this court to allow the application, set aside the ruling passed by the Taxing Master and costs of the application be provided for.

In reply, Mr. Tibaijuka for the respondent essentially supported the decision made by the taxing master. He submitted in regard with the complaint that the respondent being executive agency was not supposed to claim for instruction fee. Mr. Tibaijuka argued that since **section 13 of the Government proceedings Act, Cap. 5 R.E. 2019** provides for the Government to be awarded costs in a

similar way as the proceedings between private parties, thus, it was right for the respondent to claim instruction fee. To that effect he cited the case of **TANROADS equipment Pool Manager v. Habili and Company Limited**, Commercial case No. 12 of 2012 HCT – Commercial Division at Dar es Salaam (unreported) where it was stated that the fact that one of the parties to a suit is a government, it does not affect the award of costs or procedure of costs recovery either to the government or to any other party involved in the suit. He also argued that the Advocate Remuneration Order, 2015 does not require a party claiming for instruction fee to prove by production of receipt, voucher or remuneration agreement. To substantiate his argument, he cited the case **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Reference No. 9 of 2020, Court of Appeal of Tanzania, at Dar es Salaam (unreported).

As to the complaint that the taxing master did not observe the **Advocate Remuneration Order, 2015** in taxation of costs, Mr. Tibaijuka argued that the taxing master made a just decision in awarding Tshs. 300,000/= for the attendance than Tshs. 50,000/= which is provided by the Order. He contended that the counsel

for the respondent resides in Dar es Salaam, and he was travelling from Dar es Salaam to Mbeya to attend the court. He thus, suggested that this court should increase the amount from Tshs. 300,000/= per day awarded by the taxing master to Tshs. 500,000/= per day so as to cutter for the expenses of the counsel for the respondent in attending the case in Mbeya from Dar es Salaam. Mr. Tibaijuka thus, prayed for this court to dismiss the application with costs.

I have carefully considered the rival submissions by the counsel for both sides. In my view, this application will be conveniently determined by starting with the complaint under paragraph 11 (a) of the affidavit supporting the application. The complaint is couched as follows:

"The Honourable Taxing officer failed to disallow the total bill of costs after taxing off more than one-sixth (11,100,000/= TZS of the bill presented."

The above complaint is based on the provision of Order 48 of the Advocate remuneration Order, 2015 which requires a Taxing Officer to disallow bill of costs for being excessive claim. The Order provides that:

“48. 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.*” (Emphasis added)


Applying that provision to the matter at hand, one-sixth of Tshs. 16,300,000/= is Tshs. 2,716,700/=, but the proviso requires, at the discretion of the taxing officer to exclude/disregard instruction fee in computing one-sixth. This means that in the matter at hand the respondent claimed Tshs. 6,000,000/= as instruction fee, the taxing officer would have disregarded it then the amount for computation of one-sixth would have been Tshs. 10,300,000/= which makes one-sixth to Tshs. 1,716,700/=. Basing on the amount which was taxed (i.e Tshs. 5,200,000/=) it is clear that Tshs. 5,100,000/= was taxed off which is over and above one-sixth of the claimed amount in the bill of costs.

It follows therefore that after the Hon. Taxing Master has disallowed more than one-sixth of the claimed amount in bill of costs, and considering the circumstances I have alluded above, she was duty bound in her decision to take into account the provision of Order 48 of the Advocate Remuneration Order, 2015.

Taking an inspiration from the two decisions of this court cited by the applicant's counsel, the cases of **John Momose Cheyo v. Stanbic Tanzania Limited**, (supra) and **The Regional Commissioner of Shinyanga v. Bernard Msonga Sizasiza**, (supra), I concur with the observation made therein that Order 48 is expressly clear on excessive claims, and its legal implications. I also concur with Mr. Muya that the Hon. Taxing Master did not state in her decision the reason why she did not follow the requirement of the law. Also, the respondent did neither in her counter affidavit nor in her written submissions state anything regarding the requirement of **Order 48**.

Owing to all the circumstances stated above, I hereby allow the application and find that the respondent presented excessive claims, thus, she is not entitled to any cost in her bill of costs. Consequently, the order taxing a total of Tshs. 5,200,000/= is hereby quashed and set aside. I make no order as to costs.

Ordered accordingly.



R.A. Ebrahim

JUDGE

Mbeya

18.02.2022



Date: 18.02.2022.

Coram: Hon. A.E. Temu -DR.

Applicant:

For the Applicant: } Absent.

Respondent:

For the Respondent:

B/C: P. Nundwe.

Court: Ruling delivered in open chamber in the absence of both parties.


A.E. Temu

Deputy Registrar

18/02/2022