

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY
AT MWANZA

REFERENCE NO. 7 OF 2021

*(Originating from bill of costs No. 8 of 2020 in the High Court of Tanzania at Mwanza. Misc. Land
Application No. 147 of 2019 and Misc. application No. 57 of 2021)*

MR. DOCTORE MALESA..... 1ST APPLICANT
MARWA CHACHA.....2ND APPLICANT
NKANDA JOSEPH 3RD APPLICANT
MARY DISMAS 4TH APPLICANT

VERSUS

MWANZA CITY COUNCIL..... 1^SRESPONDENT
THE REGISTERED TRUSTEES OF BAKWATA 2ND RESPONDENT

RULING

25 & 28/02/2022

Kahyoza, J.:

The applicants were ordered to pay cost in Misc. Civil Cause No. 18 of 2018, which ended in favour of the Registered Trustees of BAKWATA ((BAKWATA), Mwanza City Council and other two people not before this Court.

BAKWATA was sued by the applicants with other three persons, who were the Permanent Secretary, Ministry of Land Housing and Human Settlement (the Permanent Secretary), Mwanza City Council (the City) and the Attorney General (the AG). The record shows that after the applicants instituted Misc. Civil App. No. 175 of 2019, the Permanent Secretary, and

the A.G. filed a joint counter affidavit and Mwanza City Council also filed a counter affidavit. BAKWATA did not file any document.

The record further showed that the AG raised a preliminary objection, which the court upheld and dismissed the Application with costs.

Following the dismissal order, BAKWATA filed a bill of costs with 5 items claiming Tzs. 1, 300,000/=. The taxing officer taxed the bill as presented. Aggrieved, the applicants referred the taxing officer's ruling to the Judge of the High court under item 47 of the Advocates Remuneration Order G.N. No. 263 of 2015.

Is BAKWATA entitled to the amount awarded as costs?

The applicants' contention in the affidavit and through oral argument is that the BAKWATA did not have any justification to claim and to be awarded costs as she never entered appearance or file any pleading. BAKWATA appeared only once.

BAKWATA refuted the submission by deponing that there was no need to prove that she paid the advocate to represent her by producing receipts. To buttress her position, BAKWATA's advocate to the case of **Tanzania Rent A Car Limited V. Peter Kimuhu**, Civil Reference No. 9 of 2020 (CAT unreported) where the court of Appeal held that-

"....in taxation of bill of costs there is no need of proof of instruction fees by presentation of receipts, vouchers and/or remuneration agreement because the taxing officer, among others, is expected to determine the quantum of the said fees in

accordance with the cost scales statutorily provided for together with the factors enumerated above.”

It is settled that the purpose of taxation is to reimburse the successful party and not to punish the loser or enrich the successful as it was clearly held in **Wambura Chacha Vs. Samson Chorwa** [1973] LRT no. 4. Costs are paid to reimburse a party for costs incurred and not to enrich the winning party. I went through the records and found that BAKWATA appeared through her advocate Mr. Mwanaupanga on the date of delivering the ruling. BAKWATA did not file a counter affidavit. Thus, there is no justification for claiming for costs of attending to court for hearing on 7/11/2019, or attending court for ruling on 26/11/2019 and 11/02/2020 when the records do not indicate that BAKWATA did attend. I, therefore, quash the taxing officer’s award for costs under items No. 2, 3 and 4. As a result I tax off Tzs. 150,000/=. I uphold the award of Tzs. 50,000/= under item No. 5.

The taxing officer also awarded BAKWATA Tzs. 1,000,000/= as instruction fees. The record showed that BAKWATA appeared through her advocate on the Ruling date. There is no doubt that BAKWATA engaged the service of Mr. Mwanaupanga advocate to represent her, the only dispute is whether the advocate was entitled to be paid Tzs. 1,000,000/=. Instructions fees presupposes that the advocate is engaged to represent a party, by doing all that it takes to represent a party in law suit, that is to conduct research, to drafting documents, and to attend to court. Given the fact that BAKWATA’s advocate was engaged at stage when the application was pending for ruling, that advocate did nothing in defence of his client. Anywise advocate was entitled behave as BAKWATA’s advocate did that is

to do anything till the Ruling is delivered to be able to know what steps to take. For that reason, I do not see any justification for BAKWATA's advocate to be paid TZs. 1,000,000/=.

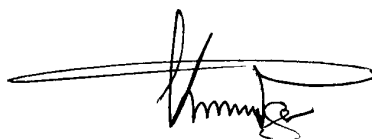
It should be remembered that costs are awarded to punish the loser but to reimburse the winner. It is trite law that instruction fees are supposed to compensate adequately an advocate for the work done in preparation and conduct of a case and not to enrich him. See the decision in **Tanzania Rent A Car Limited V. Peter Kimuhu** (supra). A similar position was taken in **Rahim Hasham v. Alibhai Kaderbhai** (1938) 1 T.L.R. (R) 676, where the Court observed that, "**Costs should not be excessive or oppressive but only such as are necessary for the conduct of the litigation.**"

I therefore, find Tzs. 200,000/= sufficient instruction fees for the professional work BAKWATA'S advocate undertook to prepare himself after receiving instruction to defend BAKWATA. I quash the taxing officer's award of Tzs. 1,000,000/= as instruction fees and substitute the same with Tzs. 200,000/=.

In the end, I allow the application, trim down BAKWATA's award and tax the bill of costs at Tzs. 250,000/= only and the rest taxed off.

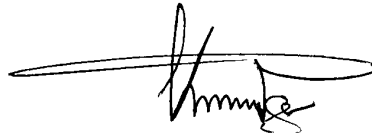
I make no orders as to costs.

It is ordered accordingly.



J.R. Kahyoza, J.
28/02/2022

Court: Ruling delivered in the presence of the first applicant and Mr. Mwanaupanga, advocate for the second Respondent. The rest absent. B/C Ms. Martina present.

A handwritten signature in black ink, appearing to read 'J.R. Kahyoza', with a long horizontal stroke extending to the left.

J.R. Kahyoza
JUDGE
28/02/2022