

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBWA DISTRICT REGISTRY

AT BUKOBWA

MISCELLANEOUS CIVIL REFERENCE NO. 01 OF 2022

(Arising from Taxation Cause No. 15 of 2021)

EDISA BAIS..... APPLICANT

VERSUS

FRESTER INVESTMENT CO. LTD.....RESPONDENT

RULING

11/07/2022 & 03/08/2022

E.L. NGIGWANA, J.

This is an application for Reference made under Order 7(1) of the Advocates Remuneration Order, 2015, G. N. No. 264 of 2015. The application was brought by way of chamber summons supported by an affidavit sworn by Frank Karoli John, learned advocate for the applicant.

The respondent was duly served with a chamber summons, and on 2/06/2022, Mr. Nikiyiza Seth, learned advocate for the respondent entered appearance and in his presence, the hearing date was fixed to wit; 21/06/2022 with a view that a court affidavit (if any) would have been filed before that date. Eventually, no counter affidavit was filed by the respondent. But also on the said agreed hearing date, the respondent entered no appearance, thus the hearing preceded exparte.

A brief back ground on this matter is that; Before the Primary Court of Bukoba Urban, the applicant instituted a case to wit; Civil Case No.219 of 2020 against the respondent claiming a sum of Tshs. **2,225,000/=** being

the value of the bag and clothes, the properties of the applicant which were handed to the respondent to transport them from DSM to Bukoba, but the applicant was not given her properties at Bukoba.

After a full trial, the applicant was awarded a sum of **Tshs. 2,225,000/=**. The respondent was dissatisfied with the trial court decision though he did not exercise the right of appeal within the prescribed time of thirty days after the date of the decision or order.

In that respect, the respondent through one Speratus lodged an application before the District Court of Bukoba seeking for extension of time to file an appeal out of time. The same was registered as Misc. Application No. 01 of 2021. In its ruling dated 20/04/2021, the District Court (**J.M. Mpitanjia, RM**) found that the applicant, now respondent had failed to demonstrate sufficient cause to warrant grant of extension of time. Consequently, the application was dismissed with costs.

Whereas, on 28/12/2021, the applicant through the legal services of Mr. Frank Karoli, learned counsel filed Taxation Cause No. 15 of 2021. On item 1, the applicant claimed a total sum of Tshs. **2,000,000/=** being costs paid to the advocate as instruction fee, on item 2, he claimed Tshs. **500,000/=** being advocate fee for filing and conducting Taxation Cause No.1 of 2021, on item 3, he claimed Tshs. **200,000/=** being attendance fee for himself and his advocate, and on item 4, he claimed Tshs. **30,000/=** being pleadings filing fee, all to constitutes a total sum of Tshs. **2,730,000/=**.

After full hearing of Taxation Cause No. 15 of 2021, the Taxing Officer (A.W. Kabuka) taxed a total of Tshs. **30,000/=** only. The order aggrieved the applicant, hence, he decided to move this court by way of reference asking this court to reverse the decision of the Taxing Officer dated 28/03/2022 with costs.

The grounds for this application were stated in paragraph 4, 5 and 6 of the affidavit supporting the application read as follows;

4. That the applicant had attached all relevant receipts to the bill of costs application for taxation.

*5. That the Taxing Master Taxed off Tshs. **2,700,000/=** for want of receipts as evidence and yet costs of the case are statutory and no proof is required and the respondent never contested the same rather than stating the same to be excessive.*

6. That the costs as prayed by the applicant was to be taxed in accordance with the scales as provided in the Advocates Remuneration Order, 2015.

At the hearing of this application, Mr. Frank John Karoli who appeared for the applicant, at the outset, adopted his affidavit to form part of his submission. The learned counsel submitted that the Taxing Officer Taxed off Tshs. **2,700,000/=** for want of attachment of receipts as evidence which indeed, is not a statutory requirement. Mr. Frank made reference to the case **Tanzania Rent a Car Ltd versus Peter Kimuhu**, Civil Reference No. 9 of 2020 where it was 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.

I have carefully considered the submission by the learned counsel for the applicant. At the outset, I agree with the learned counsel for the applicant that non-production of EFD receipts is not fatal since the advocates Remuneration Order, 2015 does not require prove of instruction fee by any kind of receipt.

The same merely provides scales of fees for proceedings of various natures. In my view, the duty of the Taxing Master or Officer is to check whether the amount charged in the bill of costs tallies with the scales provided in the Advocates Remuneration Order. In other words, the duty of the Taxing Master is to ensure that the amount charged as instruction fee, tallies with the scales provided in the Order.

In that respect, the Taxing Master can tax off excess amount if he/she finds that the amount charged is beyond the provided scales. Order 46 of the Advocates Remuneration Order, 2015 provides for the circumstances under which costs in addition to costs provided by this case may be allowed or when costs at a lower rate than that provided in the scales may be refused. The order provides that;

"All bills of costs shall be taxed on the prescribed scale, unless a judge of the High court, for special reasons to be certified, allows costs in addition to cost provided by the scale or refuses to allow costs at a lower rate than that provided in the scales".

In the instant matter, the Taxing Officer taxed off item 1, 2 and 3 on the ground that they were not supported by necessary receipts/documents. The Court of Appeal which is the Apex Court in this Country has set in place a position in the case of **Tanzania Rent a Car Limited versus Peter Kihumu** (supra) that in Taxation of bill of costs, there is no need of proof of instruction fees by presentation of EFD receipts, vouchers and or Remuneration Agreement. In that respect, it is apparent that the approach adopted by the Taxing Master in the instant matter when taxed off item 1, 2 which covered instruction fees and 3 which covered attendance fees, for want of receipts be it EFD receipts or otherwise, was wrong.

Pursuant to item 11 (1) (m) of the 11th Schedule of the Advocates Remuneration Order, 2015 the instruction fee for application for unopposed application is **Tshs. 500,000/=** and **Tshs. 1,000,000/=** for the opposed application. In the impugned Bill of costs, a total sum of **Tshs. 2,000,000/=** was claimed as instruction fee for **defending the application for extension of time to wit; Misc. Application No.1 of 2020** which was filed by the respondent herein, but the Taxing Officer Taxed off the whole amount. Undoubtedly, that was contrary to the herein above cited item. The Taxing Officer ought to have taxed off the excess amount only which is **Tshs. 1,000, 000/=**, and awarded the scaled amount which is **Tshs. 1,000,000/=**.

However, it should never be forgotten that in Taxation proceedings, instruction fee is awarded to compensate adequately an advocate for the work done in preparation and conduct of a case and not to enrich him.

The records also revealed that the learned counsel for the applicant and the applicant entered appearance in court to defend Misc. Application No. 01 of 2021 on **14/04/2021 and 20/04/2021**. The the applicant claimed for **Tshs. 200,000/=** as attendance fee for himself and her advocate. According to item 23 (a) of the 8th Schedule of the Advocates Remuneration Order, 2015, the attendance fee payable in ordinary cases, per 15 minutes or part thereof is **Tshs. 50,000/=**. In that respect it was again wrong to tax off the whole amount while the attendance by the applicant and his advocate in court on the dates indicated herein above was not objected by the respondent. Indeed, the claimed amount as attendance fee was in accordance with the fee scale provided for in the Order.

However, as regards the filing fee taxed, I find no reason to fault the findings the Taxing Officer. Furthermore, it should be noted that the purpose of Taxation is to reimburse the successful party and not to punish the looser or enrich the successful. See **Wambura Chacha versus Samson Chorwa** [1973] LRT No. 4.

In the upshot, I set aside the taxed amount on account of the taxing officer's failure to tax bills of costs on the prescribed scales and substitute the same with an award of Tshs. **1,000,000/=** being instruction fee, Tshs. **200,000/=** being attendance fee. I confirm the sum of Tshs. **30,000/=** being pleadings filing fee, to make a total of Tshs. **1, 230,000/=** which is hereby taxed as a total taxed amount.

It is ordered accordingly.

Dated at Bukoba this 03rd day of August, 2022.

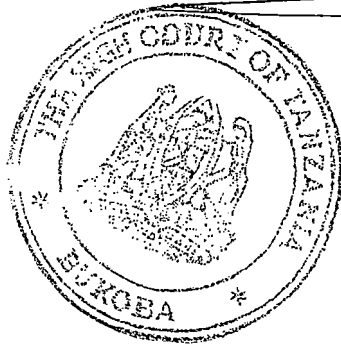


E. L. NGIGWANA

JUDGE

03/08/2022

Ruling delivered this 3rd day of August, 2022 in the presence of Mr. Frank John Karoli, learned advocate for the applicant, Hon. E .M. Kamaleki, Judges' Law Assistant, Ms. Tumaini Hamidu, B/C but in the absence of the respondent.



E. L. NGIGWANA

JUDGE

03/08/2022