

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL REFERENCE NO. 5 OF 2021

**(C/F Taxation Cause No. 93 of 2021 before the District Land and Housing Tribunal,
Originating from Land Application No. 18 of 2016 in the District Land and Housing
Tribunal of Karatu at Karatu)**

ARUSHA KALWA AWET.....APPLICANT

VERSUS

SAMWEL ORRI.....RESPONDENT

RULING

9/8/2022 & 26/08/2022

GWAE, J

The applicant has brought this application under the provision of Order 7 (1) and 7(2) of the Advocates Remuneration Order G.N No. 263 of 2015 requesting this court to examine the records and the ruling of a taxing master in Taxation Cause No. 93 of 2021 before the District Land and Housing Tribunal for Karatu at Karatu for purposes of satisfying itself on the correctness of the said ruling and make reference thereto.

The application is supported by the sworn affidavit of the applicant where a brief background giving rise to this application is stated as follows; the respondent filed Taxation Cause claiming a total of Tshs.

4,042,000/= being costs incurred in attending Land Application No. 18 of 2016 and Taxation Cause No. 93 of 2021. That, the Taxing Master approved Tshs. 2, 330, 000/= as costs to be paid by the applicant to the respondent. The applicant is now challenging the taxed amount in the following manners;

1. No material evidence was produced by the respondent to support his claim as stated in the bill of costs.
2. The ruling in Taxation Cause No. 93 of 2021 is not proper in law as it was delivered in contravention with order 48 of the Advocates Remuneration Order 2015.
3. The Taxing Master misdirected himself in approving Tshs. 1,500,000/= as the expenses incurred by advocate in defending the main case (Land Application No. 18 of 2016) while the respondent was unrepresented.
4. The taxing master did not consider arguments and authorities referred/submitted by the counsel for the applicant.

The respondent strongly opposed the application through his counter affidavit where he stated that the taxed amount is reasonable and that the main case in Land Application No. 18 of 2016 took a long time to be finalized, therefore, the taxed amount covered the costs incurred by the

respondent for transportation, meals, fees and stationaries. Finally, the respondent prayed for the dismissal of the application with costs.

At the hearing of the application, the applicant was represented by the learned counsel Mr. Felchism Baraka, the respondent on his part appeared in person unrepresented. With leave of the court the application was disposed by way of written submissions which I shall consider while disposing the application.

As to the complaint that the ruling in Taxation Cause No. 93 of 2021 was issued in contravention to Order 48 of the Advocates Remuneration Order, 2015 the applicant submitted that, one sixth of the total amount claimed in exclusion of the court fees is Tshs. 660,000/= therefore since the approved amount is Tshs. 2,330,000/= and the claimed amount is Tshs. 4,042,000/= thus Tshs. 1,712,000/= was disallowed and therefore the entire bill of costs ought to have been disallowed.

In opportune determining this issue, Order 48 of the Advocates Remuneration Order is hereby reproduced;

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

From the above provision of the law, this court is of the view that, what is submitted by the applicant is contrary to the real meaning of what is stipulated by the law. What can be derived from the above provision is that when more than one-sixth of the total amount of the bill of costs in exclusion of the court fees is disallowed it is when the entire bill of costs will be denied. Simply, in the matter at hand one-sixth of the total bill of costs in exclusion of the court fees is Tshs. 660,667/=. Therefore, in order for the taxing officer to be justified to deny the entire bill of costs claimed, the approved amount ought to have been below Tshs. 660,667/=. Therefore, I am of the considered view that, the amount approved by the taxing officer was proper and in accordance with Order 48, 2015.

The second issue for consideration by this court is whether the taxing officer was justified to approve costs of the advocate in attending Tribunal's sessions for the main case whereas the respondent herein was unrepresented throughout. This issue does not need to detain me much as the respondent also has clearly admitted that he was never being represented by an advocate in the main application. Therefore, it goes without any doubt that, the taxing officer grossly misdirected himself to approve advocate's fees in attending Land Application No. 18 of 2016 at

the tune of Tshs. 1,500,000/=knowingly that the respondent was unrepresented. That being the case the amount of Tshs. 1,500,000/= is deducted from the approved amount awarded by the taxing officer (Tshs. 2,330,000/=).

On the third compliant, the applicant challenged the decision of the taxing officer claiming that, the same was arrived at due to disregard of the authorities referred by the applicant. The applicant submitted that, among others the applicant cited authorities in relation to applicability of Order 48 and therefore he is of the view that had the taxing officer considered the referred authorities he would have not arrived to such a decision.

First and foremost, this court was not availed with the proceedings in the taxation cause, therefore, it is undoubtedly impossible for this court to have regard to what transpired at the hearing of the taxation cause. Nevertheless, as the issue of applicability of Order 48 has already been discussed, I see no need to make repetition.


Lastly, the applicant complaint was that, the taxing officer findings were not buttressed with material evidence. According to him, the respondent claimed for filing bill of costs (Tshs. 40,000/=) and Tshs. 28,000/= as filing fee for WSD as per item 31 of the filed bill of costs.

However, the applicant is now complaining that, the taxing master approved the filling fee of the bill of cost at the tune of Tshs. 40,000/= and filing fee Tshs. 40,000/= instead of Tshs 28,000/=. Again, this court would like to reiterate what is stated under section 110 of the Evidence Act Cap 6 R.E 2019 that whoever alleges certain facts to be true he/she is under the obligation to prove the same. If the applicant is of the view that the taxing officer was unjustified to have approved Tshs. 40,000/= he ought to have supported the same with evidence to show that the respondent did not claim such amount and that pursuant to item 31 of the filed bill which in this case has not been attached for reference by this court shows that the respondent only claimed for Tshs. 40,000/= as costs for filing bill of costs and Tshs 28,000/= as filing fee for WSD. In the absence of any proof or any document to show that there is a variation of the amount approved and what was claimed by the respondent, at this stage the claim is bound to fail.

The above being said, this court is of the view that, this application succeeds only to the extent of the reduction of the advocate fees approved by the taxing officer. Consequently, the approved bill of costs to be paid by the applicant to the respondent is substituted to the tune Tshs. 830,000/=.

It is so ordered.




M. R. GWAE
JUDGE
26/08/2022