

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

LAND REFERENCE NO. 02 OF 2020

(Arising from Bukoba District Land and Housing Tribunal Taxation Cause No. 185 of 2018)

YAHYA IBRAHIM.....APPLICANT

VERSUS

1. LEONARD KAGARUKI

2. GODWIN RUGOMOLA

3. SHAFI BUCHARD

4. FELIX RUHARARA

.....RESPONDENTS

RULING

Date of Ruling: 16.09.2022

A.Y. Mwenda, J

This is a Land Reference and it is brought under section 7(1) and (2) of the Advocates Remuneration Order; GN. 263 of 2015. It is supported by the affidavit affirmed by the applicant. It is intended to challenge the order by Hon. Chairman which granted costs to a tune of TZS. 2,790,000/= to the respondents. Contesting this application, Mr. Peter Joseph Matete, learned counsel for the respondent swore a counter affidavit.

At the hearing of the present application both parties were present and were legally represented. Mr. Ali Chamani, learned counsel appeared for the applicant whilst Mr. Peter Joseph Matete stood for the respondents.

When invited to submit in support to the application, Mr. Ali Chamani begun with a prayer to have the applicant's affidavit adopted to form part of his oral submission.

Further to that, he submitted that the amount of TZS. 2,790,000/= which was awarded to the respondent was in excess without regard to principles of taxing where the costs emanates from a case which was struck out or withdrawn. In support to this submission he cited the case of TANZANIA RENT A CAR LIMITED V. PETER KIMUHU, CIVIL REFERENCE NO. 9 OF 2020, at page 14. He said, in the cited case the court of appeal while making reference to the case of ATTORNEY GENERAL V. AMOS SHAVU, reduced the costs from 26,500,000/= to 30,000/= only because the case was struck out on technical grounds and that by striking out the case there was no complexities and little time was spent by advocates to argue the preliminary objection.

Mr. Chamani also cited the case of GAUTAM JAYRAM CHAUDA V. COVELL MATHEWS PARTNERSHIP, TAXATION REFERENCE NO. 21 OF 2004, CAT at page 10 and 11 where appeal ended in preliminary objection and the decree holder claimed and was granted costs to a tune of 20,000,000/= but in an appeal, the court of appeal said the award would not exceed TZS. 1,000,000/=.

Mr. Chamani went on submitting to the effect that the award of TZS. 500,000/= and 40,000/= as bill for attending and prosecution in the court and filing the same respectively is not stated in the advocate's Remuneration order. He said, in the 8th

schedule to para 3 of the order, TZS. 50,000/= is awarded for attendance of ordinary matters where the scheduled fees are not disclosed in the business arena. Further to that, Mr. Chamani submitted that costs incurred in application No. 18 of 2011 which was withdrawn ought to be excluded because costs to be tasked are those incurred only in prosecuting the matter. In support to this point, he cited the case of FR, ANDREAS BIGIRAMUNGU V. KASIMU SAID, TAXATION CAUSE NO. 2 OF 2015 at page 3 where it was held that in taxation, the court deals with costs that the decree holder has incurred in entertaining his case and nothing else. He then concluded his submission with a prayer to have the amount taxed reduced. Opposing the applicant's application and eventual submission by Mr. Chamani, Mr. Peter Matete, while making reference to the case of TANZNAIA RENT A CAR LIMITED V. PETER KIMUHU (supra) submitted that, one of the principles propounded in that case is that the successful litigant ought to be fairly reimbursed for the costs he reasonably incurred. The learned counsel said, the value of Land in dispute was TZS. 45,000,000/= and the rental fees which was claimed was TZS. 30,000/= per month. The learned counsel said, that amount is the scale used to charge professional fees, and as per Ninenth schedule, para 5 to the Advocates Remuneration Order, GN. 263 of 2015, the value of TZS. 30,000,000/= to 70,000,000/= is charged at the rate of 8% to 10% of the value of the subject matter. He said by calculation at the rate of 8% which is the minimum, the professional fees ought to be TZS. 3,600,000/=. But to them, they charged their

clients less and that the said amount is what was paid to the advocate. The learned counsel stated further that the dispute between the parties started in 2011 by the applicant who did not bother to withdraw his case since then. The learned counsel concluded by submitting in this point by praying this application to be dismissed as the said amount is intended to reimburse his clients for the costs they incurred. With regard to submission by Mr. Chamani that the fees charged for the attendance of advocate to prosecute the application was illegal, Mr. Matete submitted that the fees of TZS. 50,000/= for each attendance is the creature of Advocates Remuneration Order, at para 3 (a) because attendance of advocate is not prescribed anywhere.

The learned counsel reiterated in that this amount is not professional fees since professional fees is charged or calculated from the value of amount claimed.

With regard to submissions by Mr. Chamani that TZS. 500,000/= as instructions fees and 40,000/= filing fees for bill of costs ought to be excluded in the bill of costs, Mr. Matete said under Order. 55 of the Advocates Remuneration Order, the fees excluded in the bill of costs is attendance fees. He said, professional fees is not one of them. He added in that as per 11th schedule, para (item) (l) and (m) of the Advocates Remuneration Order, the fees prescribed for an opposed taxation cause is TZS. 1,000,000/= but they were awarded only TZS. 500,000/=. With regard to the case of FR, ANDREAS BIGIRAMUNGU (supra) cited by Mr. Chamani, Mr. Matete said, the same is distinguishable to the present application as

Application No. 18 of 2011 led to taxation cause No. 185 of 2018 and for that matter those two matters cannot be treated in isolation. He said, as opposed to circumstances in the present application, in the case of GAUTAM JAYRAM CHARDA (supra) the court dealt with only a notice of motion which was set for hearing for only one (1) day, while in the present matter, parties were attending in court since Application No. 18 of 2011 was filed.

While citing the case of VIP ENGINEERING AND MARKETING LTD V. CITI BANK TANZANIA LTD, CIVIL APPLICATION NO. 24 OF 2019 (unreported), at page 5, Mr. Matete submitted that a party intending to enter appearance in court must prepare himself adequately in all aspects and to them they took it seriously as they were, at all times when the matter was fixed for hearing, fully prepared no matter what would be decided later by the tribunal. Again, basing on the same decision Mr. Matete submitted that allowance for instructions fees is a matter peculiar and in the taxing masters' discretion which the superior courts should be reluctant to interfere unless it has been exercised un judiciously. He said since the applicant failed to state that the taxing master acted un judiciously, then the applicant's prayer is un merited.

The learned counsel concluded his submission, praying the present application to be dismissed.

In rejoinder, Mr. Chamani submitted that TZS. 50,000/= as attendance fee is not statutory. He then added in that the case of VIP engineering (supra) which was

cited by Mr. Matete is distinguishable. He then concluded by reiterating that the amount taxed was excessive.

Having summarized the rival submissions for and against the application, I am now obliged to determine the fate of this application.

In regard to an award of TZS. 2,790,000/=, Mr. Chamani was of the view that this amount was excessive and contrary to the principle of taxation because the main suit/case ended up by a withdrawal. On his part Mr. Matete was of the view that the amount of TZS. 1,500,000/= was charged as a professional fee calculated from the value of the subject matter which is TZS. 45,000,000/=; plus the attendance and prosecuting fees of TZS. 750,000/=, 40,000/= as filing fees for taxation case and TZS. 500,000/= of advocates fees for filing Bill of costs.

I have considered this issue and as it was rightly pointed out by Mr. Matete, TZS. 1,500,000/= (instruction) as fees resulted from charging 8% of the value of subject matter which is TZS. 45,000,000/=. Under paragraph 5 of the 9th schedule to the Advocates Remuneration Order, the scale fees payable for contentious proceedings for liquidated sum and appellate jurisdiction for a claim between TZS. 30,000,000/= – 70,000,000/= is charged at the rate of 8% - 10%. By simple mathematics 8% of 45,000,000/= is TZS. 3,600,000/= thus the professional fees of TZS. 1,500,000/= is not on the high side.

While submitting in support of the present application Mr. Chamani was of the view that since the main application was struck out, the case had no complexities.

I have gone through the said authorities, to wit, Tanzania Rent a Car Limited V. Peter Kimuhu (supra); Attorney General V. Amos Shawu (supra) and Gautam Jayram Cherda V. Corell Methews Partnership (supra) and noted their surrounding circumstances distinguishable to the present application. In the case of Fr. Andreas Bigirwamungu (supra) and Gautam Jayram Charda, the amount taxed was reduced as the appearance before the court was only on the date of hearing the matter, while in the present matter it involved from when Application No. 18 of 2011 was filed. On the other hand, in the case of Tanzania Rent a Car Limited (supra) the court of appeal dealt with an issue regarding the mode of proving the instructions fees and the quantum awarded to the respondent. In that case the court held inter alia that;

"... as a general rule that the award of instruction fees is peculiar within the discretion of a taxing officer and the court will always be reluctant to interfere with his decision, unless it is proved that the taxing officer exercised his discretion un judiciously or has acted upon a wrong principle or applied wrong consideration."

In the same case, the court having reproduced paragraph 9 (2), (3) and (4) of the Third schedule to the Rules the court held that;

"As it can be gleaned from the above provision, the taxing officer has been given wide latitude and discretion

to determine taxing costs as it appears to him to be proper for attainment of justice however the said discretion should be exercised within the costs scales prescribed in the rules.” [emphasis added]

From the foregoing, I find TZS. 1,500,000/= granted as instruction fees to the respondent is reasonable as the Hon. Chairman exercised his discretion within the costs scale under the Advocates Remuneration Order, GN. 263 of 2015.

On the other hand, the applicant, in his affidavit challenged the Hon. Chairman’s failure to consider that the said instruction fee was not issued with EFD receipt. I have considered this point and I am of the view that such failure is not fatal. In the case of Tanzania Rent a Car Limited (supra), the court held;

“On the basis of the above provision and authority I am in agreement with Mr. Kobas that in taxation of bill of costs there is no need of proof of instructions fees by presentation of receipt, vouchers and/or remuneration agreement because the taxing officer, among others, is expected to determine the quantum of the said fees in accordance to the costs scales statutorily provided for together with factors enumerated above.”

In regard to a complaint on the award of TZS. 500,000/= to prosecute the bill of costs and TZS. 40,000/= as filing fees while they were not part of the costs incurred in application No. 18 of 2011 which was withdrawn, I have considered this issue and as it was rightly pointed out by Mr. Matete, these fees are not included in the bill of costs. Order 55 (3) of the Advocates Remuneration Order reads;

"Fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end and the amount left blank for completion by the taxing officer."

From the foregoing order, it was then proper to exclude them as part of costs incurred in application No. 18 of 2011. Also, while submitting in respect of these fees Mr. Chamani was of the view that an award of TZS. 50,000/= for attendance is not covered by the Advocates Remuneration Order at para 3 of 8th schedule, and that the said amount ought to be claimed under the item of advocate's fees. With respect I disagree with the said submission by the learned counsel because the attendance fees for ordinary cases, per 15 minutes or part thereof is charged at TZS. 50,000/=. This fee is covered under paragraph 3 (a) of the 8th schedule to the Advocates Remuneration Order.

From the foregoing analysis, I find the granted costs of TZS. 2,790,000/= reasonable and as such, I uphold the ruling of taxing matter with costs.




A.Y. Mwenda

Judge

16.09.2022

Ruling delivered in chamber under the seal of this court in the presence of the Applicant and in the presence of the 4th Respondent and in the absence of the 1st, 2nd and 3rd Respondents.




A.Y. Mwenda

Judge

16.09.2022