

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA DISTRICT REGISTRY)

AT MWANZA

CIVIL REFERENCE NO. 06 OF 2022

(Arising from Bill of Costs No. 14 of 2022)

ELIZABETH TITO.....1ST APPLICANT

ERIC THOMAS.....2ND APPLICANT

VERSUS

AGNES ERASTO MALUNGWA.....RESPONDENT

JUDGMENT

12 & 30/9/2022

ROBERT, J:-

This is an application for reference brought under the provisions of Order 7(1) of the Advocates Remuneration Order, GN No. 264 of 2015. It has been made by way of chamber summons supported by a joint affidavit of the applicants which set out grounds for the application.

The application emanates from Bill of Costs No. 14 of 2022 in which the respondent claimed a total amount of TZS 1,750,000/=. The said claim for costs was heard and finally taxed at a tune of Tzs 905,000/=. Aggrieved by the decision of the taxing master, the applicant filed this reference seeking an order to set aside the said decision, grant costs of this application and any other relief this court may deem fit to grant.

Hearing of this application proceeded orally where the applicant enjoyed the legal services of Mr. Arnold Katunzi, learned counsel whereas the respondent appeared in person without representation.

Submitting in support of the application, counsel for the applicant argued that, the gist of this application is found in paragraph 6 of the applicants' joint affidavit in which the first issue is in relation to the order awarding costs stipulated in item 14 to 22 of the bill of costs were all items were accepted. He referred this court to the decision of Magu District Court and stated that the said decision was given without any order for costs and therefore awarding costs to the respondent was contrary to Order 4 of the Advocates Remuneration Order which requires that for costs to be paid there must be an order of the court stating that costs be paid.

The second issue relates to the costs which were not prayed for by the respondent. He claimed that the respondent prayed to be paid TZS 40,000/= being costs for breakfast, lunch and fare. However, the taxing master awarded her Tzs 50,000/= and in doing so she considered section 23(a) of schedule 8 to the Advocates Remuneration Order. Mr. Katunzi argued that the said provision provides for appearance fees which an advocate is supposed to be paid when he is representing a client and it is

different from the costs for breakfast, lunch and fare. He argued further that the respondent could only be awarded costs under the said provision if she was represented by an advocate.

With regard to the award of TZS 205,000/= being the costs for taxation application, he stated that the respondent did not deserve the award because she never prayed for such costs. He argued that though the taxing officer made reference to the provisions of Order 53(3) of the Advocates Remuneration Order when awarding the said costs, the provision is clear that there should be a blank space left to enable the taxing master to fill the same. However, the respondent never left a blank item in her application nor prayed for costs in her oral submissions which implies that she never intended to be paid taxation costs. He concluded that awarding of the said costs denied the applicant an opportunity to be heard on the said costs.

In the third issue, the applicants' complaint is centred on the costs awarded without being supported with receipts. He referred the Court to the said costs being for breakfast, lunch and fare for all the days when the respondent attended in court. While faulting the taxing master for awarding the costs without there being receipts, he made reference to Order 58(1) of the Advocates Remuneration Order which requires that

receipts be produced in respect of all disbursements and that the taxing officer is required to demand the said receipts in order to arrive at lawful costs.

Coming to the fourth issue, Mr. Katunzi argued that, the respondent was awarded costs in respect of proceedings which he did not attend. He stated that the matter from which the taxation proceedings emanated had five sittings and that the respondent was paid all of them as prayed in her claim under item 9 to 13. However, according to the records, the said matter was called for the first time before Hon. Ismail, J on 12/08/2020 and both parties were absent. It was called again on 15/10/2020 and 10/12/2020 the respondent was present. On 04/03/2021 the matter was heard online where the respondent did not attend in court and it was then adjourned for ruling on 29/06/2021 where both parties were also absent.

He contended that according to the records, the respondent only attended twice out of all the days for which costs were granted therefore he insisted that the respondent did not deserve to be paid costs for the days she did not attend.

On the last point, the learned counsel for the applicants argued that the respondent did not deserve to be paid any costs under Order 48 of the Advocates Remuneration Order which provides that where more than

one sixth of the total costs prayed for by the applicant cannot be awarded, the applicant does not deserve any payment of costs. He contended further that in this matter, the total costs prayed for was TZS 1,750,000/= while the costs awarded was TZS 905,000/= and the costs denied was TZS 845,000/=. Thus, by computation, $\frac{1}{6}$ of TZS 1,750,000/= equals to 291,000/= which is far below the denied amount. He lastly prayed this reference to be allowed with costs.

When called upon to make her reply, the respondent first prayed that her counter affidavit be adopted to form part of the submissions. She prayed further that the ruling of the taxing master be upheld as she had used costs whenever she attended the matter both at the District Court as well as the High Court. She concluded by praying that this application be dismissed with costs.

Mr. Katunzi did not have any rejoinder. That marked the end of each party's submissions.

In determining this application, I will start with the last issue in which the applicants faulted the taxing officer for failure to adhere to the provisions of Order 48 of the Advocates Remuneration Order (supra) which provides that:

"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"

It is clear from the above cited provision, that once more than one sixth of the total amount claimed is taxed off or disallowed, then the party applying shall not at all be entitled to costs. As can be gathered from the records, the bill of costs presented by the respondent for taxation was TZS 1,750,000/=. The amount allowed or taxed was 905,000/= only making the amount disallowed to be Tzs 845,000/=. One sixth of 1,750,000 is 105,000/=. It is clear therefore that the disallowed amount (TZS 845,000/=) is above one sixth of the total amount claimed (TZS105,000/=).

From those facts, I am inclined to join hands with the learned counsel for the applicants that had the taxing officer considered the said provision, she would have disallowed the whole bill of costs. I find the issue to be meritorious and it is hereby allowed.

Having decided as above, I will not labour determining the rest of the issues. I hereby allow the application by quashing and setting aside the taxing officer's decision. I make no order as to costs in respect of this application.

It is so ordered.




K.N. ROBERT
JUDGE
30/9/2022