

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA**

**CIVIL REFERENCE NO.8 OF 2022**

*( C/f Bill of Costs No. 7 of 2020 at High Court of Tanzania at Arusha, Originating from Misc Land Application No. 156 of 2017 at the High Court of Tanzania at Arusha )*

**SALUM MOHAMED LAIZER** } .....**APPLICANTS**  
**GULAM MOHAMED LAIZER** }

*( As Administrators of the Estate of the late Mohamed Kitange)*

**Vs**

**JULIUS BARNOTI ( As the Administrator of the estate of the late Kelerwa Laizer)** .....**RESPONDENT**

**RULING**

*Date of last Order: 19-9-2022*

*Date of Ruling: 24-10-2022*

**B.K.PHILLIP,J**

This application is made under the provisions of Order 7(1) (2) (3) and (4) of the Advocates Remuneration Order , 2015.The applicant prays for the following orders;

- i) That this Honourable Court be pleased to determine the validity of the decision of the High Court of the United Republic of Tanzania at Arusha , Bill of Costs No.7 of 2020 dated 3<sup>rd</sup> June 2022 before Hon. R. Massam, Deputy Registrar allowing *(sic)* the costs to the respondent .
- ii) Costs to be provided for.

The application is supported by a joint affidavit affirmed by the applicants.

The respondent swore a counter affidavit in opposition to the application.

A brief background to this application is that, in 2017, the respondent herein lodged an application before this Court seeking for an order for extension of time to file a petition of appeal against the decision of the District Land and Housing Tribunal of Arusha at Arusha in Misc. Application No. 348 of 2014 vide Misc. land application No.156 of 2017. On the 3<sup>rd</sup> of December 2019, this Court ( Hon, T.M. Mwenempazi , J) granted the said application and ordered costs to be borne by respondents , the late Mohamed Kitange and Arusha City Council , who were the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively in the said Misc. Application 156 of 2017. Thereafter , the respondent herein lodged his bill of costs vide Taxation Cause No.7 of 2020 against the late Mohamed Kitange and Arusha City Council. The late Mohamed Kitange passed on before the determination of the bill of costs .The applicants herein were appointed as administrators of the estate of the late Mohamed Kitange and joined in the application for bill of costs. In her Ruling the Deputy Registrar granted the respondent costs to a tune of Tshs 1,656,000/= .Aggrieved by the ruling of the taxing officer aforesaid, the applicants filed the instant application.

Back to the application, the learned advocates Sara S. Lawena and Bharat B. Chadha appeared for the applicants and respondent respectively. The application was disposed of by way of written submission.

Ms. Lawena's submission was to the effect that she appeared before the taxing officer for the applicants and raised a point of preliminary objection that the order for costs issued by this Court ( Hon Mwenempanzi J.) was made *per incurrium* because the respondent ( who was the applicant in application No. 156 of 2017) was supposed to win the intended appeal so as to be granted costs. The taxing officer overruled the point of preliminary objection. She went on submitting that the respondent filed the intended appeal but the same was dismissed for

failure of prosecution with costs. Thus, currently the applicants are entitled to be paid costs by the respondent.

Furthermore, Ms. Lawena submitted that amount awarded to the respondent was on the higher side because the appeal was not contested. She was of the view that a sum of Tshs 500,000/= was enough to cover the instruction fees. In addition, Ms. Lawena lamented that the arguments she made before the taxing officer were never considered by the taxing officer and the same are not reflected in the Ruling made by the taxing officer.

In rebuttal Mr. Bharat argued that the filing and hearing of the bill of costs had nothing to do with the intended appeal. The order for costs was not conditional. No law bars/prohibits the taxing officer from proceeding with the hearing of the bill of costs when there is a pending appeal. Once a bill of costs is filed in Court it is to be heard. Mr. Bharat cited the provisions of Order 4 of Advocates Remuneration Order, 2015 to cement his arguments. Moreover, he pointed out that there is no appeal against the Ruling of this Court in the said Application No. 156 of 2017.

Furthermore, it was Mr. Bharat's argument that Ms. Lawena's concern on the amount awarded to the respondent is a new issue which is not reflecting in the pleadings. He insisted that parties are bound by their pleadings. He cited the case of **Rose Mkeku ( Administratrix of the estate of the late Simon Mkeku) Vs Parvez Shabbirdin, Misc. Land Application case No.89 of 2021** (unreported). Mr. Bharat maintained that there was no any miscarriage of justice in the decision of the taxing officer and the bill of costs was filed timely. He prayed for the dismissal of this application with costs.

In rejoinder, Ms. Lawena submitted that in the case of **Rose Mkeku** (supra) the Court held that if the Judgment debtor prays for stay of the proceedings in the bill of Costs the taxing officer has to act judiciously and can stay the proceedings. Further, she insisted that by the time the bill of costs was scheduled for hearing the respondent's appeal had already

been dismissed. Moreover, she maintained her submission in chief was made in line with what is pleaded and has not raised any new issue.

Having analyzed the submissions made by the learned Advocates let me proceed with the determination of the merit of this application. I wish to start by reiterating the well known principle of the law in respect of application for reference pertaining to bill of costs, that is, the Court cannot interfere with the amount awarded by the taxing officer except under the circumstances where the taxing officer acted upon wrong principles or applied wrong considerations in coming to his/ her decision. [See the case of **East African Development Bank Vs Blue line enterprises Ltd, Civil Reference No.12 of 2006**, ( unreported) ].

Now, starting with the concern raised by Ms. Lawena on the whether it was correct for the taxing officer to proceed with the hearing of the bill costs while the respondent's appeal which was filed after being granted extension of time in Misc Land Application No. 156 of 2017, had already been dismissed, it is a common ground that Misc.Application No. 156 of 2017 was allowed with costs and no appeal was filed to challenge the said Court order. Ms. Lawena's argument that the same was issued *per incurrium* is unfounded since it has not been reversed. Thus , it is a valid and effective Court Order. From my understanding a Court order remains valid through out unless it is reversed. Therefore, I cannot fault the taxing officer for proceeding with the hearing of the bill of costs after the dismissal of the respondent's appeal. The respondent's appeal is different from the said Misc. Land Application No.156 of 2017. If at all the respondent's appeal was dismissed with costs as alleged by Ms. Lawena then, the same has to be taxed separately.

With due respect to Mr. Bharat, his contention that the concern on the amount awarded to the respondent is not pleaded is misconceived since the chamber summons indicates that the applicant requests this Court to determine the validity of the decision of the taxing master. From my understanding the applicant's prayers in the Chamber summons calls

upon this Court to go through the decision of the taxing officer and have its observation on the entire decision. In so doing the amount of costs awarded to the respondent cannot be excluded from this Court's scrutiny. Under the circumstances, I shall consider the arguments raised by Ms. Lawena on the instruction fees awarded to the respondent.

Upon perusing the Court's records and read the Ruling of the taxing officer between the lines, I noted that Ms. Lawena's concern that her arguments have not been considered is misconceived. The taxing officer took into consideration all important arguments raised by Ms. Lawena which were similar to the ones raised by the learned State Attorney Ndabhona.

With regard to the instruction fees, the impugned Ruling shows that the learned State Ndabhona raised a similar concern to the one raised by Ms. Lawena, that is, the appropriate instruction fees to be awarded to the respondent is Tshs 500,000/=. He referred the taxing officer to Schedule 11 item 1(m) (i) of the Advocates Remuneration Order, 2015. The Court's records show that the said Misc. Land Application No.156 of 2017 was disposed of by way of written submission. The late Mohamed Kitange did not file a Counter affidavit whereas Arusha City Council filed a counter affidavit but did not enter appearance to defend the application. Consequently, the Court ordered hearing to proceed by way of written submissions and learned Advocate Chadha filed his written submission in support of the application. Thus, I am inclined to agree with Ms. Lawena that the said Misc. Land Application No.156 of 2017 was not contested. So, it goes without saying that the provisions of item 1 (m) (i) of the 11<sup>th</sup> Schedule to the Advocates Remuneration Order, 2015 are applicable in this matter. The same provides that instruction fees for un-opposed matter is Tshs 500,000/=only.

In addition to the above, as observed by the taxing officer in her ruling, the said Misc. Land Application No.156 of 2017 was not a complex matter.

From the foregoing, it is the finding of this Court that in taxing the instruction fees, the taxing officer was supposed to be guided by the provisions of item 1 (m) (i) of the 11<sup>th</sup> Schedule to the Advocates Remuneration Order, 2015. Thus, it is obvious that the taxing officer acted upon a wrong principle and applied wrong consideration in coming to her decision on the appropriate instruction fees since she did not take into consideration the applicable law and the fact that the matter was not contested. On the strength of the decision of the Court Appeal in the case **East African Development Bank Vs Blue line enterprises Ltd, Civil Reference No.12 of 2006**, I hereby vary the amount of instruction fees from Tshs 1,000,000/= to Tshs 500,000/=.

The remaining items of the bill of costs were properly taxed. Thus, the amount of costs to be paid to the respondent is Tshs 1,156,000/= obtained after deducting a sum of Tshs 500,000/= from the costs awarded to the respondent by the taxing officer.

Dated this 24<sup>th</sup> October 2022.



  
**B.K.PHILLIP**

**JUDGE**