

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**TAXATION REFERENCE NO 6 OF 2021**

*(C/f Taxation Cause No. 61 of 2019, arising from Civil Case No. 23 of 2017)*

**NDOVU ADVENTURES LTD .....APPLICANT**

**VERSUS**

**ELIBARIKI LORRY ..... RESPONDENT**

**RULING**

12/09/2022 & 08/11/2022

**KAMUZORA, J.**

This application is made under Order 7(1) and (2) of the Advocate Remuneration Order 2015. The chamber application is supported by the affidavit deponed by Gideon Makara, the Managing Director of the Applicant. The application is strongly opposed by the Respondent in a counter affidavit deponed by Mr. Duncan Joel Oola, the counsel for the Respondent. The Applicant in this reference being aggrieved by the decision of the Taxing officer in Taxation cause No 61 of 2019 delivered on 07/09/2020 calls upon this court to quash and set aside the said decision on the following grounds: -

- 1) That, Taxing officer erred in law and rejecting the claimed instruction fees, fees for court attendance and transport costs.*

*2) That, the Taxing officer erred in law in refusing to award fees for attending the taxation cause.*

Hearing of the application was by way of written submissions and as a matter of legal representation the Applicant was duly represented by Advocate Madgalena Sylister from Matrix Attorneys while the Respondent enjoyed the service of advocate Jeff George Sospiter from Duncan Joel Oola & Co. Advocates. Both parties filed their submissions as scheduled.

Arguing in support of the 1<sup>st</sup> ground, it is the Applicants submission that, in determining the quantum of the instruction fees the taxing officer is guided by various principles. Referring the case of **Premchard Rainchad Ltd and Another v Quarry Service of East Africa Ltd and Others** (No. 3) (1972) E.A No 162 she submitted that, a successful litigant ought to be fairly reimbursed for the cost he reasonably incurred. She pointed out that, before the taxing officer, the Applicant presented a detailed bill of costs which identified the instruction fees, fees for court attendance and transport costs. That, the taxing officer only granted court fees under item 9 and 10 and declined to grant the instruction fees and fees for court attendance as well as transport costs on ground that the Applicant did not produce EFD

receipts as proof of the costs incurred citing the case of **Tanzania Rent Car Limited Vs. Peter Kimuhu**, Civil Reference No. 9 of 2020 Cat at DSM (unreported). The Applicant's counsel was of the view that, it is not a mandatory requirement to furnish EFD receipts as a proof for costs. Citing the case of **Hotel Travertine Ltd Vs. National Bank of Commerce**, Taxation Civil Reference No 9 of 20006 CAT at DSM (Unreported) it is the Applicants submission that, transport expenses were granted even though there were no receipts in proof of such expenses as the Applicant had used private transport.

Submitting for the 2<sup>nd</sup> ground, the Applicant's counsel argued that, the taxing officer declined to award costs to the Applicant for attending the taxation cause for the reason that the taxed off amount in the bill of costs was more than 1/6 of the total amount. Referring Order 48 of the Advocate Remuneration Order, the Applicant's counsel submitted that, the said order allows the taxing officer to disregard instruction fees if assessing whether the amount taxed off exceeds 1/6 of the total amount. She explained that, in this application the total amount claimed by the Applicant in the Bill of costs was Tshs 4,810,000/= and the amount of Tshs 4,000,000/= was the amount for the instruction fees. That, had the taxing officer exercised his discretion well by deducting

the instruction fees from the computation of 1/6 of the amount the remaining tax off amount would not exceed 1/6 of the total amount hence the Applicant would be entitled to the cost for attending Taxation. Basing on the submission made it is the Applicants prayer for this court to allow the application and quash and set aside the impugned decision of the Taxing officer.

Contesting the application, the counsel for the Respondent argued in respect of the first ground that, the amount presented by the Applicant in respect of the amount of instruction fees, fees for court attendance and transport costs were excessive, high exaggerated and was lacking a required proof. The Respondent contended that, the principle in assessing the instruction fees is settled and cited the case of **Joreth Ltd Vs. Kigano & Associates** [2002] 1EA 92. The Respondent in pointing the case of **Tanzania Rent A Car Ltd** (Supra) stated that, he is aware of the principles in that case but added that the same does not open the door for advocates and clients to manufacture claims for costs by mentioning any amount without having proof.

The Respondent added that, at the time the Applicant filed the Bill of costs it was a mandatory requirement to produce EFD receipts for proof of the amount claimed. That, if the Applicant incurred such an

amount as instruction fees but no any proof was presented in court to that effect, the court cannot assume that such amount was actually incurred. For this argument reference was made to the case of **Alfayo Tingisha Vs. Simon Laanyuni**, Misc. Civil Application No 47 of 1998.

Citing Order 55 and 58 of the Advocates Remuneration Order GN No 263/2015 and the case of **Onesmo Nangole Vs. Dr. Stephen Lemomo Kiruswa**, Civil Appeal No 117 of 2017 CAT at DSM (Unreported), **BP Tanzania Vs. Commission General of TRA**, Civil Appeal No 125 of 2015 CAT at DSM (unreported) the counsel for the Respondent submitted that, the receipts are required to ascertain whether the costs were really incurred. That Order 55 of the Advocate Remuneration Order receipts can be requested by the taxing officer to prove costs. That, since no evidence proving that the costs were incurred the same should not be allowed.

Responding to the 2<sup>nd</sup> ground, the counsel for the Respondent argued that, the fees in attending taxation cause as presented by the Applicant were not filed in accordance with Order 48 of the Advocates Remuneration Order 2015 and the same were not allowed by the taxing officer after the Applicants failure to present the required documents for

the satisfaction of the court. The Respondent thus pray that, the application be dismissed with costs.

In a brief rejoinder the Applicant's counsel submitted that, the Respondent's claim that the instruction fees were rejected for being outside of the scale stipulated under the Advocates Remuneration Order GN No 263 of 2015 is not correct as the amount claimed was even lower compared to the prescribed amount. She added that, such a reason was not even the reason for its rejection but the same were rejected for failure of the Applicant to produce the EFD receipt.

Regarding the claim that EFD receipts was mandatory during the filing of the Bill of costs, the Applicant submitted that, bill of costs is governed by the Advocate Remuneration Order and the said law does not contain a provision which imposes a mandatory requirement of the presentation of the EFD Receipts as a proof of any claimed amount except that, under Order 58 (1) of the Advocates Remuneration Order the receipts referred relates to the issues of disbursement. The Applicant added that, proof on attendance is in the court proceeding which shows that the Applicant appeared in all dates indicated in the bill of costs and the said costs are yet to be paid hence there cannot be an EFD receipt for them. The Applicant thus prays that the application be allowed.

Having considered the submissions made by the parties and the records, the main dispute between the parties is whether the taxing officer was correct to disallow instruction fees, fees for court attendance, transport costs and taxation costs. It is clear that, the taxing officer disallowed instruction fees, fees for court attendance and transport costs for the reason that, there was no proof of the EFD receipts proving that the costs were incurred by the decree holder in prosecuting the case. The costs for prosecuting the bill of cost was disallowed for the reason that more than 1/6 of the bill was taxed off.

Starting with the claim for instruction fee the taxing officer applied the principle that the same had to be proved by the EFD receipts. The law governing various scales to be charged in the bill of costs is the Advocates Remuneration Order GN. No. 263 of 2015. Under the said law, apart from prescribing the chargeable amount on every aspect, there is no provision imposing the requirement for EFD receipt to prove instruction fees. The Court of Appeal of Tanzania in the case of **Tanzania Rent a car Limited Vs. Peter Kimuhu**, Civil Reference No 9 of 2020 (Unreported) when faced with a similar situation like the present one had this to say;

*"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 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 together with the factors enumerated above."*

Subscribing to what was held in the case cited above and with regard to the circumstance in the present application, I find it that it was wrong for the taxing officer to deny the decree holder the instruction fees for failure to produce the EFD as it is not a requirement of the law. Much there is proof that the Applicant engaged the service of an advocate it surfaces to assess the instruction fee based on costs scales provided for under the Advocate Remuneration Order.

In the bill of cost the Decree holder (Applicant herein) claimed for the sum of Tshs 4,000,000/= as instruction fees for defending Civil Case No. 23 of 2017 and in the said case, the amount claimed was Tshs 51,000,000/=. Pursuant to the 9<sup>th</sup> schedule item 5, the fees amount chargeable at the rate of 8 to 10 percent. The Applicant thus claimed an amount of Tshs 4,000,000/= which if computed is 8% of the total amount claimed in the main suit. However, it should be noted that, the matter was not conclusively determined rather, it was struck out on the



preliminary point of objection. I therefore find that, the amount of 4,00,000 is excessive in considering that the same could have been awarded if the matter was determined on merit but much as the same was disposed on technical issue and no hearing of evidence, I find the amount of Tshs 2,000,000/= as appropriate and reasonable for the instruction fees.

With respect to the claim for costs in attending court session, the taxing officer just like in the instruction fees declined from awarding the same for the same reason that no EFD receipt was tendered. Just like the instruction fees I find this principle wrongly applied by the taxing officer as there are no express requirements for EFD receipt for one to be entitled to claim for the costs in attending court sessions. The scales for the attendance costs are well provided for under the law, the 8<sup>th</sup> Schedule to the Advocate Remuneration Order. Under item 2 to 8 the Applicant claimed Tshs. 50,000 as costs for attending court sessions in different dates which the attendance is not disputed. The claimed amount is the cost scale prescribed under the law in which Tshs. 50,000 is to be charged per every 15 minutes on attending court session. I therefore allow costs under item 2 to 8 making a total the Applicant

claims for a total of Tshs. 750,000/= as costs for attending court session for mention. Hearing and ruling.

Under item 9 and 10 there is claim for disbursement under which fees for filing documents and transport costs were claimed. I agree that the court needed only to assess the reasonability of the transport costs and the costs for filing are very clear. Thus, the amount of Tshs. 20,000 claimed as transport costs is reasonable hence awarded. The filing costs are obvious and thus the amount of Tsh 40,000 for filing is also awarded.

For the last item No 11 of fees for attending taxation as with regards to the record in Taxation cause No 61 of 2019 the Applicant made an appearance before the taxing officer seven times that the matter was called and for each appearance, I award Tshs 50,000/= making a total of Tshs 350,000/=.

In the upshot, the Applicant is entitled to the costs in the following terms; Tshs 2,000,000 as instruction fees, Tshs. 750,000 as costs for attending court session, Tshs. 40,000 as filing fees, Tshs. 20,000 as transport costs and Tshs. 350,000 as costs for prosecuting bill of costs. The total amount allowed is Tsh 3,160,000/= in respect in respect of the

bill of costs emanating from Civil Cause No 23 of 2017. In the event this reference application is allowed to the extent explained above.

**DATED** at **ARUSHA** this 8<sup>th</sup> day of November, 2022.



  
D.C KAMUZORA

JUDGE