IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL REFERENCE NO. 5 OF 2019

(*Arising from the PC Civil Appeal No. 48 of 2017*)

HAMAD HAMDANI.....APPLICANT

VERSUS

SALMA SALEHE.....RESPONDENT

RULING

Date of last order: 25/5/2021

Date of Ruling: 07/01/2022

S.M. KULITA J;

This is a ruling for an application for reference brought under order 7(1) and 7(2) of the Advocates Remuneration Order of 2015. It is accompanied with a chamber summons and affidavit affirmed by **HAMAD HAMDANI,** the Applicant who seeks for this court to tax off the amount taxed in the Bill of Cost (Taxation Cause) which arises from the PC Civil Appeal No. 48 of 2017.

The matter was disposed of by way of written submissions. The applicant appeared in person while the respondent was represented by the learned counsel Mr. Daimu Khalfani.

In his submission in support of the application, the applicant submitted that the amount sum of Tshs. 5,280,000/= awarded for the respondent as costs is unrealistic and over-exaggerated on the ground that there were no supporting documents in respect of the amount spent in prosecuting the case. The applicant referred this court to the provisions of Order 58(1) and (2) of the Advocate Remuneration Order. He explained that although the law gives a standard scale of charges for the legal services rendered to a client, it does not waive the legal requirement to prove the claim for the costs spent by the party in prosecuting the case. The Applicant stated that in this application the respondent has not provided any EFD receipts in accordance with section 36(1) of the Tax Administration Act with regard to the costs incurred in prosecuting the Taxation Cause. To buttress his argument the applicant cited the case of **Professor Emmanuel A. Mjema vs Managing Editor Dira ya Mtanzania Newspaper & 2 Others, Reference No. 7 of 2017, High Court at DSM**.

Further to his submission the applicant submitted that the Taxing Master misdirected himself in ordering the amount taxed

contrary with the provisions of the Rule 1 of the 11th schedule to the Act, that he acted beyond the provisions of the law.

The Applicant also challenged the award of Tshs. 1,500,000/= to the Respondent as the costs for prosecuting the bill of costs from which this application arises. He said that, as compared to the work done that the matter was just a matrimonial cause, it doesn't involve any technicalities to deal with, the said sum is over-exagarated and contrary to the requirement of the 8th schedule, paragraph 1 of the Advocates Remuneration Order, 2015.

In his concluding remarks the applicant prayed for this court to overrule the decision of the Taxing Master.

In reply thereto Advocate for the Respondent, Mr. Daimu Khalfani submitted that the taxed amount of Tshs. 5,280,000/= is reasonable and fair on the ground that the Respondent had filed the bill of costs at the tune of Tshs. 10,570,000/= of which the applicant complained to be too high, thus the taxing master taxed at the sum of Tshs. 3,780,000/= which is about one third of the amount requested by the applicant.

Mr. Daimu Khalfani further submitted that the Respondent again requested the taxing officer to tax the sum of Tshs. 3,000,000/= as the instruction fees, however upon consideration the Taxing

Master taxed the sum of Tshs. 1,500,000/= for which the applicant did not dispute it.

As for the costs for defending bill of costs the counsel stated that Paragraph 1(l) to the 11th schedule to the Advocates Remuneration Order, 2015 applies, hence the sum of Tsh 1,500,000/= that has been taxed for defending bill of costs is reasonable.

On the issue of supporting documents and EFD receipts Mr. Daimu Khalfani submitted that the law does not compel the proof of documents on the instruction fees and attendance costs be by way of receipts. He submitted that Order 12(1) of the Advocates Remuneration Order confers discretion to the Maxing Master to assess the amount of costs and award the same as they appear necessary and proper.

The Counsel submitted that the bill of costs is not a tax matter, hence the requirement of EFD receipts is not applicable. To support his argument, he cited the cases of **Salehe Habib Salehe vs Manjit Gurmukh Singh, Civil Reference No. 7 of 2019, High Court Land Division** and **Premchand Raichand Ltd & Another vs Quarry Services of East Africa Ltd & Others (No. 3) [1972] EA 162.**

Mr. Daimu Khalfani further submitted that the attendance costs are statutory entitlement for an advocate in every attendance to

the court which is awarded to the successful party. On this the counsel relied his submission in accordance with Rule 3(a) of the 8th Schedule to the Advocate Remuneration Order which empowers the court to assess the amount payable for attendance, of which he finds fair and just. To support his argument the Respondent's Counsel cited the case of **Mwangi Ken'gra & Co Advocates vs Invesco Assurance Company Limited [2021] KLR**.

Finally, Mr. Daimu prayed for this court to dismiss the application with costs.

Having considered the submissions of both parties, the issue for determination is whether the bill was improperly taxed, that the amount taxed is unreasonable.

It is not disputable that the matter originated from the Primary Court where appearance of the learned advocates is restricted by law, thus the appearance of the learned advocate started at the District Court level when the matter was tabled for the first appeal in which the matter ended up with no order as to costs, it was ordered that each party was to bear its own cost.

The applicant raised the issue of EFD receipts in respect of costs incurred by the respondent in prosecuting the case, that the respondent has not tendered the EFD Receipt to prove the said costs. As rightly submitted by Mr. Daimu Khalfan that the

application at hand is not a tax matter which has a separate arrangement under the Tax Administration Act.

Upon going through the law governing taxation of costs, that is the Advocates Remuneration Order, 2015 which is made under section 49(3) of the Advocates Act, Cap. 341 I have noted that taxation of costs in contentious proceedings is governed by the rates prescribed in the 10th, 11th, and 12th schedules to the Order. The cited law does not prescribe how payment of charges in respect of services offered by an Advocate should be proved. Similarly, the cited law does not require the use of EFD receipts in taxation proceedings as a proof of payment or of validity of the payment receipts to be taxed.

In fact, Order 58(1) of the Advocates Remuneration Order, 2015 requires receipts or vouchers for all disbursements charged in a bill of costs to be produced at taxation only if required by the Taxing Officer with an exception of Witness allowances and expenses supported by a statement signed by an Advocate. It is not disputed that Regulation 10(5) of the Income Tax (Electronic Fiscal Devices) Regulations, 2012 requires every user of Electronic Fiscal Device to issue fiscal receipt or invoice generated by his Electronic Fiscal Device to acknowledge payment. Regulation 21 punishes any failure to acquire or use Electronic Fiscal Device while Regulation 24 punishes any failure

to demand and retain a fiscal receipt or fiscal invoice. However, Regulation 18 provides for circumstances where a user may temporarily be allowed to use manual receipt or invoice. While I find these Regulations relevant in acknowledging payment for purposes of taxation and punishing users for failure to issue fiscal receipt nothing in these Regulations invalidates transactions done by users using manual receipts. Accordingly, I do not agree with the Applicant's submission that proof of any payments to an advocate has to be done by submitting Electronic Fiscal Device (EFD) receipts simply because sections 36(1) of the Tax Administration Act, 2015 requires use of electronic fiscal device. In **Buckreef Gold Company Ltd V. M/S Taxplan Associates Ltd, Misc. Commercial Reference No. 3 of 2017 (unreported)** it was held that EFD receipts may be relevant when there is a dispute as to whether one pays taxes or government revenues, which was not an issue in this matter.

For those reasons, the instruction fees could not be rejected simply because it was granted in the absence of the EFD receipts. Therefore, the applicant's argument on this issue does not hold water.

My only comment on the Instruction Fees is that, it was charged at the tune of Tsh. 3,500,000/=which is too excessive while the 11th Schedule to the Advocates Remuneration Order, 2015

provides Tsh. 1,000,000/= as the maximum amount that the Advocate has the mandate charge for the case that had been argued inter-parties. Actually, Item 1, Paragraph 1(m), sub-para (aa) provides that the Taxing Master has discretion to increase the amount, but upon considering the nature, complexity of the case and time taken to finalize the matter. This was blessed by the Court of Appeal in the case of **AMOS SHAVU V. AG, Taxation Reference No. 2 of 2000, CAT at DSM (unreported)**.

As for the matter at hand, the Taxing Master taxed the instruction fees at the tune of Tsh. 3,500,000/=, the amount which exceeds Tsh. 1,000,000/= without any justification, this is fatal. According to the above cited provision, the said decision by the Taxing Master ought to have been accompanied with the reasons that made him to award the instruction fees at the tune that exceeds Tsh. 1,000,000/=.

Upon considering the fact that the case involved matrimonial matter and does not have legal technicalities which would require a thorough detailed research by the Learned Advocate, I find the awarded sum of Tsh. 3,500,000/= too excessive. That being the case, the excessive sum of Tsh. 2,500,000/= is taxed off from the Tsh. 3,500,000/= which was taxed as the instruction fees. In that regard, I hereby tax the instruction fees to the tune

of Tshs. 1,000,000/= which is prescribed by the law in accordance with Item 1, Paragraph 1(m), sub-para (aa) of the 11th Schedule to the to the Advocates Remuneration Order, 2015.

The amount taxed for defending the application for bill of costs which is Tsh. 1,500,000/= is disputed. Actually, I find it too excessive as compared to the work done. Worse enough it was not accompanied with any reason while granted by the Taxing Master, the only reason that the Decree Holder (Respondent) must have incurred costs in preparing its pleadings and defending the bill, the argument is true but the work done does not relate with amount that was taxed. I therefore tax it at the tune of Tshs. 500,000/=.

With regard to the amount of Tshs. 250,000/= taxed for the attendance to the court, I find it judiciously awarded by the Taxing Master, hence no need to interfere her decision. Lastly, the amount taxed for the disbursement, the taxing master taxed it at the tune of Tsh. 30,000/=, I also find it reasonable, hence remains as it is.

From the above analysis, I hereby reduce the total amount taxed by the Taxing Master, Tshs. 5,280,000/= to Tshs. 1,780,000/= in the following breakdown;

1. Instruction Fees Tshs. 1,000,000/=.

2. Attendance Fees Tshs. 250,000/=.

3. Disbursement Tshs. 30,000/=.

4. Defending the Bill of Costs Tshs. 500,000/=

Total Tshs. 1,780,000/=

In upshot the application is hereby partly allowed. Each party to bear its own costs.

S.M. KULITA

JUDGE

07/01/2022