

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CIVIL REFERENCE NO. 8 OF 2021

(Arising the ruling in Taxation Cause No. 13 of 2021, by Hon. Moyo – Deputy Registrar which emanated from Miscellaneous Application No. 16 of 2021 – High Court Musoma (Hon Kahyoza, J))

FINCA TANZANIA LTD APPLICANT

VERSUS

SHABANI SAID MGANDA RESPONDENT

RULING

21st Nov & 2nd Dec.2022

F. H. Mahimbali, J.:

The applicant in this reference application has been aggrieved by the ruling of Hon. Moyo, Deputy Registrar as Taxing Master in taxation cause no. 13 of 2021 which emanated from Misc. Civil Application No. 16 of 2021. The said bill of costs had a total claim of 6,010,000/=, out of which the total costs taxed was only 1,210,000/=. Thus, an amount of 4,800,000/= was taxed off.

The current reference which is preferred under Order 7 (1) and (2) of the Advocates and Remuneration Orders GN 264 of 2015 is challenging the award of the Taxing Master as it is containing legal errors for this Court's intervention.

The main legal concern as argued by Mr. Kaswahili, learned advocate is one. That, as the total claim of bill of costs before the taxing master was 6,010,000/=, and that the amount taxed off/disallowed is 4,800,000/= which exceeds 1/6, then the Taxing Master ought not to tax the remaining balance at 1,210,000/= instead, it ought to have taxed off the whole bills pursuant to order 48 of the GN 264 of 2015. Mr. Steven Kashwahili submitted this while also making reference to the case of **John Momose Cheyo V. Stanbic Tanzania Ltd**, Commercial Reference No. 72 of 2018.

Furthermore, it has been argued that items 3, 5, 6 and 7 were taxed accordingly but were not accompanied by requisite receipts for the said claims.

The application has been opposed by the respondent through Mr. Edson Philip who on the date of hearing of the application his brief was held by Mr. Paulo Obwana, learned advocate.

On his part, Mr. Paulo Obwana resisted the application contending that what the Taxing Officer did was right as per law as she exercised her discretion well.

As regards to attending costs to court, he submitted that the same are statutorily provided. There can not be receipt to substantiate it.

I have digested the arguments by both sides as far as this application is concerned. The issue for contention here is what is the one-sixth (1/6) claim of bill of costs means. Order 48 of the said GN 264 of 2015 provides:

*"Where more than **one-sixth** of the total amount of 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 such **instruction fee claimed** may be disregarded in the computation of the amount taxed of that fee in the computation of the one-sixth".*

In this case, the total amount for taxation claimed was 6,010,000/=. The same has been taxed off/disallowed by 4,800,000/= for being excessive. If that was generally considered by the taxing officer, then it meant that the whole taxation would have been taxed off/disallowed. Since one-sixth of the total claim of 6,010,000/= is 1,001,666.6, and as the


amount taxed off/disallowed by the taxing officer is 4,800,000/=, then in disregard of the taxing master's discretion, the applicant would have been entitled to nothing. However, as the said law provides for the taxing officer's discretion, unless it was established that she misapprehended the law on the exercise of that discretion, she was legally justified to arrive at that decision. I am alive of the decision of the case of **John Momose Cheyo V. Stanbic Tanzania Ltd** (supra) in which it generally ruled that when more than one-sixth of the claimed costs is disallowed, then the applicant is entitled to nothing. However, that decision didn't in my considered view abolish the taxing officer's discretion as provided under order 48. What it can be gathered from that decision which reviewed the taxing officer's taxation is this, perhaps in the former case, the taxing master did not exercise his discretion well unlike in the present case. Thus, that decision is distinguishable.

With other contested items, I am satisfied that all were dully established. The requisite receipts are attached with the respondent's submission in support of his claims and others are statutorily provided which do not require production of receipt especially on claim of court's attendance.


That said, the reference application is hereby dismissed for being vexatious. Nevertheless for interests of justice, parties shall bear their own costs in the circumstances of this case.

DATED at MUSOMA this 2nd day of December, 2022.




F.H. Mahimbali
Judge

Court: Ruling delivered this 2nd day of December, 2022 in the presence of the Steven Kaswahili, advocate for the appellant, Edson Philip, advocate for the respondent and Ms. Elizabeth Gwerino, RMA.


F.H. Mahimbali
Judge