

IN THE HIGH COURT OF THE UNITED OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO

REFERENCE NO 21 OF 2022

*(Arising from the Decision of Morogoro District Land and Housing Tribunal for
Morogoro, at Morogoro in Misc. Land Application No. 33 of 2022)*

NICODEMUS HASSAN APPLICANT

VERSUS

MONICA LALUNDI RESPONDENT

RULING

19th December, 2022

CHABA, J.

The matter at hand came before me as a Reference Application by virtue of Order 7 (1) of the Advocates Remuneration Order, GN. No. 264 of 2015. As background, the brief facts leading to this application as gleaned from the parties' pleadings can be summarized as follows: The respondent herein successfully sued the applicant in Land Appeal No. 16 of 2021. Following the said victory, Miscellaneous Application No. 33 of 2022 was instituted by the respondent herein claiming reimbursement of the costs incurred in pursuing Land Appeal No. 16 of 2021 amounting to the sum of TZS. 2,334,000/=.

Upon hearing of the parties, the Taxing Master taxed the bill at a total of TZS 1,492,000/=, which comprised of TZS. 600,000, being costs for drafting an application for Bill of Costs, TZS. 650,000/= being costs for

transport incurred by the respondent in attending her case before the DLHT for Morogoro, at Morogoro from Chalinze to Morogoro region, TZS. 150,000/= being the costs (disbursement) incurred by the learned advocate while attending before the tribunal for four (4) days TZS. 30,000/= per each single day of attendance, TZS. 42,000/= being disbursement of court fees, and TZS. 50,000/= being costs incurred for court process serving, and the rest or other claims amounting to TZS. 842,000/= were taxed off.

At the conclusion of the matter, the decision was made in favour of the respondent. Undaunted with the decision, the applicant preferred this Reference Application by way of Chamber Summons supported by his affidavit seeking for the following orders to the effect that:

- (i) This Court to quash and set aside the ruling of the Taxing Officer in Miscellaneous Application No. 33 of 2022 between the parties herein;
- (ii) Costs of this suit be borne by the respondent; and
- (iii) Any other order and or relief this Honourable Court may deem fit and equitable to grant.

When this Reference Application was called on for hearing, with the parties' consent, it was agreed that the same be conducted by way of

written submissions. Whereas the applicant drew and filed by himself the written submission in support of his Reference Application, the respondent enjoyed the legal services Mr. Mandela Nuhu Kisawani, learned advocate. Both parties filed their respective submissions as scheduled by the court.

Arguing in support of the present reference application, the applicant firstly prayed the court to adopt his affidavit and form part of his written submission. He proceeded to argue that the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT) on 20th day of May, 2022 delivered a ruling in favour of the respondent by granting unproven costs claimed by the respondent in absence of any receipt or documentary evidence which were produced before the DLHT to prove those costs.

He averred that, the costs claimed by the respondent in respect of the impugned decision are inappropriate and unreasonable save for the costs which are statutory. He added that, the trial tribunal reached her decision on the basis of mere words, and nothing was proved as in the standards required by the law.

To reinforce his argument, the applicant referred this court to the case of **Elizabeth Mohammed v. Adolf John Magesa (2016)**, TLR **114**, where this Court (Mruma, J.) held *inter alia* that: -

"In my view, is not always the case and courts should never make findings on assumption where there are specific prescribed procedures for proving the alleged facts".

Based on the above authority, the applicant lamented that the trial tribunal made its findings based on assumptions that the respondent incurred costs without producing even a single receipt to show and prove that those costs were actually incurred. In that view, the applicant concluded that, the costs claimed by the respondent remains unproved and the same have to be disregarded by this court.

Contesting the application, the counsel for the respondent commenced to argue in respect of the first ground by stating that, all the costs awarded by the Taxing Master was proper due to the fact that the appeal, which is the subject to the costs sought by the respondent, was conducted by the tribunal upon spending two years dealing with the matter. He further averred that, the applicant has failed to discount the amounts of the costs that he thinks are on the high side.

As regards to the applicant complaint's that, the impugned decision was made out of assumptions, Mr. Kisawani referred this this court to the following precedents to fortify his position: **VIP Engineering and Marketing Limited v. Citibank Tanzania Limited**, Civil Application

No. 24 of 2019 which quoted with approval the case of **The Attorney General v. Amos Shavu**, Taxation Reference No. 2 of 2000 (Unreported), **Premchand Rauchand Ltd and Another v. Quarry Services of East Africa Ltd and Others (No.3) (1972) 1 EA 162** and **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Reference No. 09 of 2020. In the case of **Tanzania Rent a Car Limited** (Supra), the Court observed 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".

From the above authority and reasons given, Mr. Kisawani prayed this court to dismiss the reference with costs for being devoid of merits.

I have carefully considered the rival written submissions made by both parties in line with the instant reference application. I am alive to the fact that, there is a general principle governing interference with the exercise of the taxing officer's discretion, as once stated by a **South**

African Court, in the case of Visser v. Gubb 1981 (3) SA 753 (C)

754H - 755C. The Court held *inter-alia* that: -

"The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue. ..."

Having observed the legal position, now the question is, what is the issue for consideration and determination in this reference?. As noted above, this taxation reference challenges the amounts taxed in favour of the respondent. Basically, the applicant is claiming that the taxation is not backed up or supported by the available evidence or records.

As hinted above, the issue which I am called upon to address therefore is, whether it was appropriate for the DLHT / Tribunal to assess and tax TZS. 1,492,000/=, being the total costs incurred by the respondent to conduct the impugned decision.

To determine this issue, I am guided by the principle of law expounded in the case of **Tanzania Rent a Car Limited v. Peter Kimuhu** (Supra) which underlined that the determination of the amounts of bill of costs to be taxed is a discretionary matter by the taxing master.

As gathered from the rival written submissions advanced by both parties, it is undisputed that, the applicant didn't produce any receipts to prove his claims. On the other hand, the respondent argued that there are no requirements of proof of payment by receipts. Reliance was placed on the case of **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Reference No 09 of 2020.

On scrutiny of the parties' pleadings and the lower tribunal's record, I tend to join hands with the submission advanced by the respondent's counsel on the ground that the current position of the law departs from the mandatory requirement of attaching EFD receipts in proving the bill of costs. In **Tanzania Rent a Car Limited** (Supra) it was further held that: -

"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."

From the above principle of law, the paramount guidance should be on the cost scales as statutorily provided by the law, together with other factors such as the greater the amount of work involved, the complexity of the case, the time taken up at the hearings including attendances to the court, correspondences, perusals and the judicial authorities or arguments presented before the court or tribunal.

I had ample time to reassess the bill of costs taxed by the tribunal against the applicant. In the bill of costs, the decree holder (respondent herein) claimed for the sum of TZS. 900,000/= being costs incurred for drafting an application for Bill of Costs where the tribunal taxed off, a total of TZS. 300,000/= and awarded only TZS. 600,000/=. In my considered opinion, the Taxing Master justifiably exercised his discretion and taxed the bill of costs in accordance with the law.

The applicant also prayed this court to revise the order in respect of transport fees incurred by the respondent. He alleged that the Taxing Master allowed the amount of TZS. 650,000/= basing on the claim that the respondent was coming from Morogoro while according to him, the respondent used to reside at Ngerengere area. On this facet, I find the argument posed by the applicant has no legal value and weight as well, on the ground that he failed to justify his assertion and did not adduce any proof to the satisfaction of this court. Thus, the transport fees taxed at the rate of TZS. 650,000/= stands still due to unsuccessful proof and being unauthentic allegation.

Concerning the amount of TZS. 150,000/= charged and taxed as costs for transport incurred by the respondent's learned advocate in attending sessions at the trial tribunal, my assessment on this aspect gave me assurance that to the effect that, it has not been challenged at all, hence remains unchanged. This finding applies similarly to the items relating to Disbursement which was taxed at the tune of TZS. 42,000/= and TZS 50,000 being costs incurred for court serving process.

Basing on the foregoing observations, and to the extent of my findings, I have no reasons whatsoever to fault with the findings and decision of the Taxing Master rather than upholding his decision. The applicant shall pay the respondent TZS. 1,492,000/= being the total

amounts incurred by the respondent as indicated above, as awarded by the District Land and Housing Tribunal for Morogoro, at Morogoro.

In the final event, the reference by the applicant is accordingly hereby dismissed with no order as to costs. Each party to bear its own costs. **It is so ordered.**

DATED at MOROGORO this 19th day of December, 2022.




M. J. Chaba

Judge

19/12/2022