

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

**IN THE DISTRICT REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL REFERENCE NO. 19 OF 2020**

**(Arising from Civil Case No. 221 of 2002 and Bill of Cost No. 54 of 2018  
and Original Civil Case No 221 of 2002)**

**BETWEEN**

**GEOFFREY MISANA AND 24 OTHERS.....APPLICANTS**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY COMPANY LIMITED.....RESPONDENT**

**RULING**

**MRUMA.J.**

This is an application brought under the provisions of Order 7 (1) and (2) of the Advocates Remuneration Order, G.N. No. 263 of 2015. It emanates from Bill of Costs No.54 of 2018.

In that bill of costs the Applicant had claimed for Tshs 37,455,000/- as his costs but it was taxed at T.shs 4,299,800/- in the following manner:-

- i. Tshs 2,994,000/- was taxed as the instruction fees;
- ii. Tshs 305,800/- was taxed as the disbursement and;

- iii. Tshs 1,000,000/- was taxed as the cost to argue the bill of costs.

Being aggrieved by the Taxing Officer's decision the Applicants have filed this seeking this court to reverse the decision made by the Taxing Officer on the ground that the amount awarded was far below the amount presented. It is the Applicants contention that the Taxing Officer did not properly exercise his discretionary powers and consider several factors including complexity of the case and time taken in prosecuting the case. As is the practice this application is supported by the affidavit of the Applicant and in this matter the affidavit of Geoffrey Misana dated 15<sup>th</sup> December,2020.

The hearing of this application proceeded by way of written and both parties were represented. Whereas the Applicant was represented by Mr William Yohana Fungo Advocate, the Respondent was represented by Mr Mkumbo Elias learned State Attorney.

Submitting in support of the application Mr. Fungo submitted that taxing master in taxing the Bill of costs did not properly exercise his discretionary powers to consider several factors regarding the complexity of the case and time taken to prosecute it. He contended that this bill of costs ought to have been taxed as presented taking into account the

amount of time, energy and industry invested nature and important of the matter involved in the dispute, the amount of money involved interest of the parties and the general conduct of the proceedings.

Responding to Mr Fungo's argument, Mr Mkumbo learned State Attorney submitted that in taxing bill of costs courts are guided by governing laws and established principles. He said that the fact that case took eighteen years pending court can not be a justifiable reason for taxing master to tax the bill of costs as presented. According to Mr Mkumbo the taxing master has a discretion power in taxing the bill of costs as it appears proper to him and that is what he did in the present case. He added that the contention the bill of costs should be taxed as presented contravenes the provision of the Advocate Remuneration Order GN. No. 264 of 2015 which provides for what should be taxed for what and under what circumstances.

I have gone through the rival submissions of the parties and the record of Civil Case No 221 of 2002. Mr Fungo's main concern is that the Taxing Officer did not take into consideration necessary factors including time taken to conclude the matter which is more than eighteen years.

Going through the record of the matter generally I would agree with the learned advocate for the Applicant that the learned Taxing

Officer didn't properly direct himself on various issues. First the record shows that this matter took over sixteen years in court which is over and above two years period stated in court's client service charter. This period ought to have been considered in taxing the bill of costs. In the case of Tanzania Rent a Car Ltd Versus Peter Kimuhu Civil Reference No 9 of 2020 it was held that:-

*"The Taxing Officer has wide latitude and discretion to determine taxing costs as it appears to him to be proper for attainment of justice"*

The Court went on to hold that:-

*"The Taxing Officer is expected to determine the quantum of instruction fees in accordance with cost scales statutorily provided for together with other factors among them time spent in concluding the matter"*

The learned taxing officer didn't take that into consideration in taxing the bill of costs in this matter. As the record would bear testimony, the matter which gave rise to the impugned bill of costs was instituted in 2002 and it was concluded in 2012 which a period of ten years and it was not until 2018 when it was possible to file a bill of costs. In taxing the bill of cost the learned Taxing Officer

ought to have considered that period of time in view value of the currency involved and inflation rate, rising of costs of living or otherwise. Taking all that into consideration I allow this reference and substitute Tanzania shillings 2,994,000/= awarded by the Taxing Officer as Instruction fees to Tanzania shillings 14,970,000/=. The amount of T.shs 2,994,000/= could have been appropriate had the matter been concluded in two years after it was filled. The amount of T.shs 14,970,000/= is the instruction fees that would have been paid in every two years for the period of ten (10) years the matter was pending in court.

In summary therefore this reference is allowed to the extent explained above. As it is trite that every litigation must come to an end I order that each party shall bear own costs in respect of this reference. It is so ordered.



A handwritten signature in blue ink, appearing to be "A.R. Mruma", is written above the printed name.

**A.R. Mruma**

**JUDGE**

**3/11/2022.**