

**IN THE HIGH COURT OF TANZANIA
TANGA DISTRICT REGISTRY
AT TANGA**

**CIVIL REFERENCE NO. 7 OF 2019
(ARISING FROM BILL OF COSTS NO. 6 OF 2017)**

NIWAEL GABRIEL ZAKAYO..... APPLICANT

VERSUS

**AGNESS SAMWEL KIMBUTE.....1ST RESPONDENT
MRINDE SAMWEL KIMBUTE.....2ND RESPONDENT**

RULING

Date of RULING- 01/04/2022

Mansoor, J:

The Applicant instituted Civil Case No. 7 of 2015 at the High Court of Tanzania at Tanga against the respondents herein. She claimed for Tshs 800,000,000 being general damages for defamatory words taunted by the respondents herein against the applicant. The case was dismissed for it was barred by limitations. The suit was dismissed with costs on 22 November 2016 by Hon Judge Amour Khamis.



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Following the dismissal of the suit, the respondents herein applied for their costs, they filed the Bill of Costs at the High Court claiming for payment of Tshs 24,740,000 as costs. The Taxing Master allowed only Tshs 4,390,000. Tshs 4,000,000 was allowed as Advocates Instruction Fees, he also allowed items 6, 7 and 8 of the Bill of Costs as disbursements which is Tshs 40,000, he allowed Tshs 350,000 as attendance costs. Thus, total costs allowed were Tshs 4,390,000.

Aggrieved by the Taxation, the Applicant herein who is the Judgement Debtor filed the Reference under Order 7 (1) and (2) of the Advocates Remuneration Order, 2015, Government Notice No. 263 published on 17/07/2015.”

Rule 7 (1) of GN No. 263 of 2015 provides that, “any party aggrieved by the decision of the Taxing Master, may file reference to a Judge of the High Court.”

The reasons for Reference are stated in the affidavit of the Applicant that, the Taxing Master wrongly awarded Tshs 4,000,000 as instructions fees to the Advocate, saying that the

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amount of Tshs 4,000,000 is not reasonable. The applicant argues in her written submissions that the case was dismissed at the very early stages and did not take long. She says, the plaintiff was lodged, and the counsel for the defendants raised the objection on the competency of the suit, the objection was upheld, and the suit ended there. That, the records shows that the counsel for the respondents attended the court only three times, thus he does not deserve to be paid Tshs 4,000,000, and, the Advocate did not have receipt that he received payments from his client as instruction fees, and that the receipts produced in court had consecutive number paid on different dates, thus argues the appellant that the receipts seem not to be genuine. That the Advocate of the respondents being a very senior advocate ought to have produced EFD Receipts, but the counsel ignored this requirement, and this is the reasons why the applicant is disputing the instruction fees allowed by the Taxing Master.

I agree with the submissions of the counsel for the respondent that instruction fees are charged based on the amount

claimed and based on the scales available under the Advocate Remunerations and Taxation Rules. These fees are paid to the Advocate once the parties entered into an agreement of representation, i.e., between the client and the advocate. In this case the Advocate provided the receipts, and the Taxing Master assessed the receipts and was satisfied that they were genuine receipts. The receipts supported the Bill of Costs as money paid by the client to his advocate. There is no requirement that the receipts must be the EFD Receipts, and this argument by the Applicant was not backed up by any concrete provision of the Revenue Laws, thus unsubstantiated. After all, The Advocate Remunerations Rules allows the Taxing Master to receive and accept vouchers and receipts, not necessarily EFD Receipts, Rule 55 reads:

55. Vouchers to be produced on taxation

- (1) Receipts or vouchers for all disbursements charged in a bill of costs together with all documents or drafts or copies thereof shall be produced on taxation.

(2) The preparation of drafts and other documents which are charged for by the folio shall have the folios consecutively numbered in the margin of the same, and the number of the folios shall be endorsed therein in figures.

(3) The length of all documents not vouched by attested copies or other satisfactory evidence shall be certified by the advocate, and if such certificate be erroneous the Taxing Officer may disallow the cost of the document so erroneously certified or any part thereof.

Under Order 21 (1) of G N No. 264 of 2015, the Taxing Master can allow such costs, expenses as authorised in the order or appear to him to be necessary or proper for attainment of justice. Again Order 12 (1) of the Advocates Remuneration Order, G.N No. 264 of 2015, allows the Taxing Master to allow such costs, charges and expenses as authorised by the Order, it reads:

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“The taxing master may allow such costs, charges and expenses as authorised in this Order or appear to him to be necessary for attainment of justice.”

This provision permits the taxing master to tax the bills presented by the parties or counsels for their costs and remuneration and the duty of the Taxing Master is to decide whether a party who presented the bill is entitled to be remunerated and be paid his costs

Under Schedule IX of the Rules, the Advocate is allowed up to 3% as instruction fees for amounts of claims exceeding Tshs 300,000,000, and the Taxing Master is permitted to tax such fees as having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interests of the parties, complexity of the matter and all other circumstances of the case as it may be

fair and reasonable, but so that due allowance shall be given for other charges raised under this Schedule.

The records shows that although the counsel for the respondents attended in court only three times, but he took care and efforts and time to prepare and file in court the defence as well as he filed the notice of preliminary objections and he pursued the objection till the end. Thus, although the advocate is permitted to charge up to 3% of the amount claimed, the Taxing Master only allowed Tshs 4,000,000 simply because the matter was not heard on merits till its final determination. Thus, the amount allowed, were fair and reasonable.

For these reasons, I find the amount of Tshs 4,000,000 as instructions taxed, and it was taxed accordance with the scale and the Taxing Master correctly awarded the amount having regard to the care and labor used by the Counsel in defending the Claim.

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This reference is disallowed, the amount of Tshs 4,000,000 as instruction fees being fair and reasonable, and supported by receipts were correctly taxed.

Reference is disallowed and dismissed with no orders as to costs.

DATED at TANGA this 1st day of APRIL 2022




L. MANSOOR

JUDGE

1ST APRIL 2022