

“ORIGINAL”

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

**CIVIL REFERENCE NO. 3 OF 2021
(ARISING FROM BILL OF COSTS NO. 28 OF 2019)**

HALIMA SHABANI..... APPLICANT

VERSUS

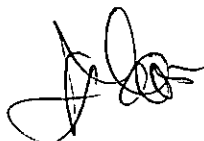
**TIMA MWAKIUNDE.....RESPONDENT
(ADMINISTRATIX OF THE ESTATE OF THE LATE MWAKIUNDE ABDALLAH)**

RULING

Date of RULING- 03/03/2022

Mansoor, J:

Halima Shabani won a dispute against Tima Mwakiunde in Misc. Land Application No. 94 of 2018 at the High Court in which Halima Shaabani had applied for extension of time to file the Notice of Appeal out of time. Halima Shabani lost the application, the application was dismissed with costs on 09 May 2019. Thus, Tima Mwakiunde was awarded costs for defending the application. Tima Mwakiunde then filed the Bill



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of Costs at the High Court claiming for payment of Tshs 6,360,500 as costs. The Taxing Master allowed Tshs 1,000,000 as Advocates Instruction Fees, he also allowed items 2, 3 and 4 of the Bill of Costs for court attendance and allowed Tshs 300,000 as costs for attending the Bill of Costs. The total costs allowed was therefore Tshs 1,500,000.

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, that the Taxing Master wrongly awarded Tshs 300,000 as costs for attending the Bill of Costs as the Decree Holder did not claim for it. The application for Reference was vehemently resisted by the Respondent/the Decree Holder

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who filed counter affidavit stating that the taxation was in accordance with the law. That the law requires that the Bill for attending taxation should not be included in the main body of the Bill, but it should appear at the end, and the amount should be left blank for completion by the Taxing Master. This is as per Order 55 (3) of GN no. 264/2015.

I have heard the Counsel's submissions and I shall state that the format for preparing Bill of Costs is prescribed in the Advocates Remuneration Orders, GN No 264 of 2015, and Order 55 (3) of G N. 264/2015 which requires that fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion of the taxing master. The Bill of Costs presented to the Taxing Master was in total compliance of the law.

Now, was the Taxing Master allowed to fix Tshs 300,000 as the Costs for attending the Bill of Costs. 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

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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:

“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.

The above quoted order permits the taxing master to tax the bill presented to him and allow such costs, charges and expenses incurred in litigation but also allows him to grant or award costs of taxation of the Bill of Costs which was left blank in the Bill. However, in awarding the costs, the Taxing

Master is guided by the 6th Schedule to the Advocates Remuneration Order, item 5 reads as follows:

Attendance—

- (b) on any necessary application to, or attendance on, the magistrate or registrar including taxation, per fifteen minutes or part thereof, 15,000 shillings.

Therefore, for attending the Bill of Costs, the Taxing Master was to charge only Tshs 15,000 per fifteen minutes, and since the Counsel said they have attended only 6 sessions of fifteen minutes each, the proper charges for attending the Bill of Costs should have been Tshs 15,000 x 6= Tshs 90,000.

For these reasons, I Revise the Ruling of the Taxing Master and the Amount of Tshs 300,000 allowed as Charges or costs for attending the Bill of Costs is reduced to Tshs 90,000 (Ninety Thousand Only,) as that is the Fees allowed or fixed by the Sixth Schedule, Item 5 (b) of the Advocates Remuneration Orders.

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This reference is allowed and revised as above, with no costs.

DATED at TANGA this 03RD day of MARCH 2022




L. MANSOOR

JUDGE

03RD MARCH 2022