

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND REFERENCE NO. 01 OF 2022

(C/F Application No. 64 of 2021 and Arusha District Land and Housing Tribunal,
Application No. 35 of 2018)

BETWEEN

MUSTAPHA BOAY AKUNAAY.....APPLICANT

VERSUS

MOSES MEIMAR LAIZER.....RESPONDENT

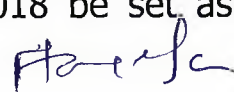
RULING

02 & 30/05/2023

MWASEBA, J.

The applicant herein preferred this application to be heard on the following orders:

1. That the Taxation Ruling in Arusha District Land and Housing Tribunal be taxed according to the provisions of the law and as the justices of the case require.
2. That the Taxation Ruling in Arusha District Land and Housing Tribunal Application No. 35 of 2018 be set aside as being excessive.

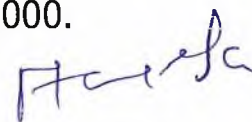


3. That the respondent pays the costs of this application.

During the hearing of the application, the applicant was represented by Ms. Fauzia Mustapha Akonaay, learned counsel whilst the respondent was represented by Mr. Emmanuel Sood, learned counsel. With the leave of the court, the hearing proceeded by way of written submission.

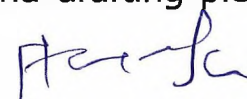
Supporting the application, Ms. Fauzia submitted that during the hearing of the bill of costs at the District Land and Housing Tribunal of Arusha (Herein DLHT) mistakenly referred to the Taxation in the bill of costs No. 509 of 2016 instead of Land Application No. 35 of 2019 which was a slip of the pen, however, each application was terminated without going to a hearing.

She submitted further that as per the case of **Premchand Ltd and Another vs Quarry Services of East Africa Ltd and Others**, (No. 3) [1972] E.A 162 the successful litigant ought to be fairly reimbursed for the costs he has reasonably incurred to do justice to both parties. She argued further that as the application was withdrawn without being heard, there was no justification to award Tshs. 1,500,000 as instruction fees. She supported her argument with the case of **Attorney General vs Amos Shavu**, Taxation reference No. 2 of 2000.



It was his further submission that the taxing officer did not comply with **Order 58 (1) of the Advocate Remuneration Order**, GN 264 of 2015 as he did not require an advocate to produce a receipt of the presented bill, which is also the requirement of **Section 29(1) (a) of the Value Added Tax**, Cap 148 R.E 2019 and **Section 36 (1) of the Tax Administration Act**, Cap 438 R.E 2019 which need an advocate to be registered for valued added tax and to issue Electronic Fiscal Device Receipt. She supported her argument with the case of **Professor Emmanuel A. Mjema vs Managing Editor Dira ya Mtanzania Newspaper and two others**, reference No. 7 of 2017. She argued further that as the matter originated from probate cause the Taxing officer should have ordered each party to bear its costs. She prayed for the reference to be allowed and the decision of the Taxing Officer to be set aside.

Opposing the application, the learned counsel for the respondent Mr. Sood submitted that the Taxing Officer in the bill of costs No. 35 of 2018 did adhere to the requirement of the law under the provisions of **Order 12 (1) of the Advocate Remuneration Order**. He submitted further that the award of Tshs. 1,500,000/= covers the work done by the counsel before the trial such as researching and drafting pleadings. He

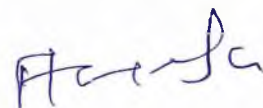


supported his argument with the case of **Ujar Sigh vs The Mbeya Cooperative Union** (1968) HCD 173.

Regarding the issue of the Electronic Fiscal receipt, it was Mr. Sood's submission that whether the receipt was attached or not is irrelevant since the Tax has already been paid to the Government during the time of payment. His arguments were cemented with the case of **Salehe Habib Salehe vs Manjit Gurmukh Sigh and Another**, Reference No. 7 of 2019 (HC-Unreported) and **Tanzania Rent a Car Limited vs Peter Kimuhu**, Civil reference No. 9 of 2020 (Unreported) where the court emphasized that there was no need to submit receipts in the bill of costs application.

As for the argument that they agreed with his client that the payment will be made after the case is just a mere word that misleads the honourable court. Thus, he prayed for the reference to be dismissed with costs.


Having considered the arguments by the counsel for the parties on this reference, the issue for determination is whether the reference is meritorious.



I will start with the argument brought by the counsel for the applicant that as the matter originated from the Probate Cause, the Taxing Officer ought to have ordered each party to bear its own costs. With due respect, it is the firm view of this court that the duty of the taxing officer is not to change what has been ordered by the tribunal in the main application, if the applicant was satisfied with that order, he could have appealed to challenge the order. The duty of the Taxing officer is to execute what has already been decided by the court or tribunal not otherwise.

The applicant further showed her grievances to the instruction fees to be too excessive as the matter was withdrawn and it was never heard. So the learned counsel respondent could have not done any work to deserve Tshs. 1,500,000/= as taxed by the Taxing Officer. To respond to this point, I wish to be guided by the case of **Tanzania Rent a Car Limited vs Peter Kimuhu**, (supra) in which the Court held that:

"As argued by both counsel for the parties, it is a general rule that the award of instruction fees is peculiarly within the discretion of a taxing officer and the Court will always be reluctant to interfere with his decision unless it is proved that the taxing officer exercised his discretion



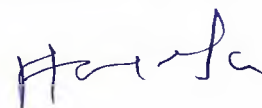
injudiciously or has acted upon a wrong principle or applied wrong consideration."

See also the case of **Rahim Hasham vs Alibahai Kaderbhai** (1938) 1 T.L.R. (R) 676.

In our application for reference, even though the respondent's advocate prepared for the hearing of the application, he did not argue the application. The amount of instruction fees will be slightly below comparable to cases which proceeded to a full trial. Thus, it will be sufficient to intervene with the amount awarded by the Taxing Officer. Therefore, this court will reduce the amount of instruction fee from 1,500,000/= to 1,000,000/=.

As for the issue of EFD (Electronic Fiscal receipt) receipts this court has made it clear in several cases that the same is not required in the bill of costs to prove that the counsel was paid instruction fees as long as he attended the court to represent his client. See the case of **Kitinda Kimaro vs Anthony Ngoo and Another**, Civil Reference No. 6 of 2016 (Unreported).

Lastly, the argument that the learned counsel was not paid and that he was waiting to be paid at the end of the case was just a mere word as

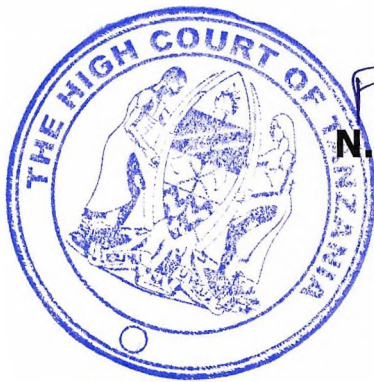



no evidence was submitted to prove the same. Therefore, the same is disregarded by the court.

For the reasons stated herein, this reference is allowed to the extent stated herein.

Ordered accordingly.

DATED at **ARUSHA** this 30th day of May 2023.




N.R. MWASEBA
JUDGE