

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL REFERENCE NO.9 OF 2022**

(C/F Taxation Cause No. 3 of 2020, Based on Appeal No. 34 of 2016 at the High Court of Tanzania at Arusha, originating from Simanjiro District Land and Housing Tribunal, Appeal No. 19 of 2016, From Emborate Ward Tribunal in Land Case No. 1 of 2016)

**BETWEEN**

**LESIRAT KASHIRO..... APPLICANT**

**VERSUS**

**VERANI HANGO.....RESPONDENT**

**RULING**

18/09/2023 & 30/10/2023

**MWASEBA, J.**

This application was brought under **Order 7(1) and (2) of the Advocates Remuneration Order, GN No. 264 of 2015**. The chamber application was supported by an affidavit deposed by the applicant himself. The application was contested by the Respondent through counter affidavit deposed by the Respondent.

The Applicant in this application was aggrieved by the decision of the Deputy Registrar (Taxing officer) in Taxation Cause No. 3 of 2020. The

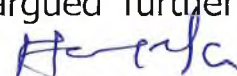


Applicant prays for this court to assess the validity of the ruling made thereto and make an appropriate order.

As a matter of legal representation, the Applicant enjoyed the service of Mr. Sylvester Kahunduka learned advocate and the Respondent appeared in person, unrepresented.

Arguing in support of application, Mr. Kahunduka submitted that in taxation Cause No. 3 of 2020 the respondent was awarded Tshs. 1,710,000/= out of Tshs. 15, 750,000/= which was presented for taxation. Therefore, he argued that as more than one sixth of the bill of costs was taxed off, it was wrong for the respondent to be awarded such amount as it was supposed to be taxed off as per **Order 48 of the Advocates Remuneration Order**, 2015. He supported his argument with the case of **Zitto Zuberi Kabwe and Two Others v. The Attorney General**, Misc. Civil Application No. 15 of 2021.

In contesting the application, the respondent submitted that as per **Order 39 and 46 of the Advocate Remuneration Order**, 2015 the successful litigant ought to be fairly reimbursed for the costs he reasonably incurred. He submitted further that the Taxing master being guided by those principles awarded such costs to the respondent and the awarded amount was not excessive. He argued further that the




court is not allowed to interfere with the decision of taxing master unless he acted on a wrong principle or applied wrong consideration as per **Order 12 (1) of the Advocates Remuneration Order, 2015**. His argument was supported with the case of **Erenedina William Swai v. Andrea Nehemia Swai and Another**, Civil reference No. 1 of 2020. He prayed for the application to be dismissed with costs.

Having considered the record in Taxation Cause No. 3 of 2020, chamber application, affidavit, counter affidavit, and the submissions by counsel for the applicant and the respondent in person, the pertinent issue for determination is whether the reference before me has merit or not.

It is not in dispute that the respondent in Taxation Cause No. 3 of 2020 prayed to be awarded Tshs. 15, 750,000/= and the Taxing officer awarded him Tshs. 1,710,000/= which includes the costs of the taxation application too. It is also not in dispute that the disallowed amount was more than one sixth of the bill of costs claimed. It should be noted that **Order 48 of the Advocates remuneration Order, 2015** provides that:

*"When more than one-sixth of the total amount of a bill of costs exclusive of court fees is disallowed, **the party presenting the bill for taxation shall not be entitled to the costs of such taxation:***



***Provided that, at the discretion of the taxing officer any instruction fee claimed, may be disregarded in the computation of the amount taxed of that fee in the computation of the one-sixth.*** (Emphasis is mine)


Guided by the cited provision, this court upon glancing on the ruling delivered by the Taxing Officer on 14/12/2020, it is noted that she did not explain whether the instruction fees claimed will be disregarded in computation of the amount taxed of the one sixth. Therefore, this court is of the firm view that the costs awarded to the respondent in Taxation Cause No. 3 of 2020 was in contravention of **Order 48 of the Advocates Remuneration Order**, GN No. 264 of 2015.

In the end result, the application is hereby allowed and the decision of the Taxing officer in taxation Cause No. 3 of 2020 is hereby quashed and set aside. To reduce the multiplicity of cases, each party should bear its own costs.

It is so ordered.

**DATED** at **ARUSHA** this 30<sup>th</sup> day of October 2023.



  
**N.R. MWASEBA**  
**JUDGE**