

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY  
AT MOSHI**

**CIVIL REFERENCE NO. 3 OF 2023**

*(Reference from the Ruling and Order of the Taxing Officer of the District Land and Housing Tribunal of Same at same dated 27<sup>th</sup> April, 2024 in Misc. Application no 95 of 2022)*

**MOHAMED MAGIRI .....APPLICANT**

**VERSUS**

**JANI KIBACHA SINGO ..... RESPONDENT**

**RULING**

9<sup>th</sup> November & 14<sup>th</sup> December, 2023

**A.P.KILIMI, J.:**

This is the ruling in respect reference arising from taxation cause filed at the District Land and Housing Tribunal of Same at Same vide application no. 95 of 2022. The applicant hereinabove has sought this reference under Order 7 (1) (2) of the Advocates Remuneration Order, G.N. No. 263 of 2015 praying for this court to revise the Ruling on above said taxation Cause, costs of this reference and other order this court may grant.

The material facts gave rise to the present reference are straight forward to the effect that; on 12/10/2021, the Applicant filed Misc. Application No. 310/2021 before District Land and Housing Tribunal of

Same, where among other reliefs, the Applicant prays before the Tribunal for an Order to stay execution in respect of Misc. Application No. 307/2021. Upon the Respondent being served with the Applicant's Application filed Notice of Preliminary Objections. After determination of the said Preliminary Objections, the Chairman sustained the same and struck out the said Misc. Application No. 310/2021 with costs. Consequently, the Respondent filed Bill of Costs vide Taxation Cause No. 95/2022 before the Tribunal praying to be paid total sum of Tshs. 4,569,000/= Having held on merit the Chairman ordered the Applicant who was the Judgment Debtor to pay the Respondent a total sum of Tshs. 2,624,000/=. Dissatisfied with the said award the applicant has knocked the door of this court by way of reference.

At the hearing of this reference, I conceded with both counsels' prayer that the same be argued by way of written submissions. Accordingly, Mr. Gidion B. Mushi learned advocate representing the appellant prayed to adopt the content of applicant's affidavit and submitted that the amount awarded is too excessive and unjustified, he further claimed the Taxing officer was not reasonable to use his discretion which should be in accordance to order 12(1) of the Advocates Remuneration

Order, 2015 to allow the costs. The counsel also referred to Order 13 of the same law and argued that Advocate is not allowed to charge or to accept remuneration over and above those prescribed in the Order unless on special circumstances.

In respect to taxed amount, the counsel for applicant argued the taxing officer did not exercise his discretion which requires to tax costs within the scales prescribed in the Advocates Remuneration Order, 2015. Therefore, since the scales are prescribed, then proof in terms of receipt would not be necessary as the scales are already statutorily provided for unless claims of costs are above the statutory scale. To support he referred the case of **Salehe H. Salehe vs Manut Gurmukh Singh and another** Reference No.7 12019, High Court of Tanzania, Dar es Salaam (Unreported).

The learned counsel also added that Misc. Application No. 310/2021 was disposed at the preliminary stage, it is tantamount for the Chairman to hold that, the Applicant shall pay total sum of Tshs, 2,624,0001=, which is high, since there was neither anything complex about the prosecution of the said Preliminary Objections nor special grounds or difficulty justifying claim for higher scale. While the claim for Instruction fees in contentious

application like Misc. Application No. 310/2021, are statutorily provided under Order 1 (m) (ii) of 11<sup>th</sup> Schedule to the Advocates Remuneration Order. He further submitted Costs including transportation costs, consultation fee, meals, accommodation and food fee should be covered in Instruction fees and not otherwise. Therefore, the awarding of the same had no justification and is contrary to order 39 read together with Order 41 of the above law.

Relying on his application pending, the advocate for applicant submitted that, after the said Misc. Application No. 310/2021 was struck out, the Applicant managed to file other Application the same Tribunal which was Misc. Application No. 310/2021 praying for the same reliefs. On 24/11/2021, the Tribunal stayed the execution pending final disposition of Misc. Land Application No. 46/2021 before this Court, which on 16/8/2022 was disposed and extension of time to file Application for Leave to the Court of Appeal of Tanzania was granted. To which through Misc. Land Application No. 3/2022, Applicant prayed for leave to appeal to the Court of Appeal of Tanzania, and the same was granted thus has already filed record of appeal at the court now is pending for assignment. Therefore, in

the circumstances prays this court the costs of Tshs. 2,624,000/= awarded be taxed off.

Responding to the grounds above Mr. Goodluck learned counsel represent the respondent contended that the Applicant was satisfied with the order of cost ordered by the trial tribunal in Misc. Application No.310 after being struck out, this is because the Applicant has never challenged the said order but instead, he filled another Misc. Application No.93/2022 in the same trial tribunal asking for order of stay of execution which was finally granted. He further contended that according to Order 12(1) the law above does not provide mandatory requirement taxing officer to bound by prescribed scales, the order allow him to award such costs as appear to him to be necessary or proper for attainment of justice. He also added that Order 13 of the Advocate Remuneration Order should not be read in isolation of Order 14 and 15. Therefore, instructions fee is not necessary to be in accordance with those provided in the scale as the Applicant complained.

Replying in respect to the case **Salehe Habib Salehe vs Manjit Gurmukh Singh** (supra) cited by the applicant, the counsel for respondent contended that the same is immaterial in this matter since the

said case discussed on issue of proof of receipt and it does not provide on mandatory requirement to taxing officer to be bound on taxing cost according to scale. Further responding to the additional fee, the counsel contended that the applicant should not read the orders in isolation of Order 14 and 15 of the same law as it provides about additional fee and special fees of which in their matter it was added Tshs. 500,000/= which is reasonable and fair. Moreover, he maintained other allowance such as food and accommodation were granted at the discretion of the court pursuant to 11<sup>th</sup> schedule item 1(m) (aa) of the said orders.

I have considered the rival submissions by both learned counsel, I wish to start with the concern raised by the applicant at paragraph 8 of his affidavit that, the fact he was granted leave to appeal to the Court of Appeal of Tanzania against the decisions made in respect of Application No. 21 of 2015 of the District Land and Housing Tribunal of Same and against Land Appeal No. 43/2020 of this court it is wise that the Tribunal should stay proceeding in respect of the said Taxation and wait final disposition of the intended Appeal before the Court of Appeal of Tanzania. In reply at paragraph 8 of the counter affidavit, the respondent contended that Miscellaneous Application No 310/2021 was finally concluded and it

was not challenged instead the applicant file another similar application which was granted, thus it not proper to stay this taxation.

Under Item 4 of the Advocates Remuneration Order, provides that bill of costs shall be filed within 60 days from the date of the order awarding costs. The law states plainly as follows;

*"4. A decree holder may, within sixty days from the date of an order awarding costs, lodge an application for taxation by filing a bill of costs prepared in a manner provided for under Order 55."*

I have considered the above averment and the record of this matter, I am settled since no appeal against the said matter, the arguments raised to the case taxed has no merit since the taxation arises from the matter which was concluded and not appealed for, thus the case in this matter qualifies the above status.

Back to the taxed amount, it is a trite law, taxing officer has been given discretion to determine taxing costs as it appears to him to be proper for attainment of justice. However, the said discretion should be exercised within the cost scales prescribed in the Rules. Thus, the taxing officer may consider other factors such as the greater the amount of work involved,

the complexity of the case, the time taken up at the hearing including attendances, correspondences, perusals and the consulted authorities or arguments. (See **Tanzania Rent a Car Limited vs Peter Kimuhu** [2021] TZCA 103 (TANZLII)).

Moreover, it is a well-established principle in the Case of [Gautam Jayram Chavda vs Covell Matthews Partnership Ltd \[2003\] TZCA 28](#) (TANZLII) that the Court will not interfere with questions of quantum by the Taxing Master unless there are exceptional circumstances

To start with instruction fees, it is trite law that instruction fees is supposed to compensate adequately an advocate for the work done in preparation and conduct of a case and not to enrich him. In **Smith v. Buller** (1875) 19 E.9.473, cited in **Rahim Hasham vs Alibhai Kaderbhai** (1938) 1 T.L.R. (R) 676, the Court observed that;

*"Costs should not be excessive or oppressive  
but only such as are necessary for the conduct  
of the litigation."*

I have considered the nature of the application at the tribunal under Eleventh schedule is supposed to be taxed at Tshs. 1,000,000/= but it was taxed at Tshs. 1,500,000/=, I am mindful the same may be taxed above or



below prescribed but under exceptional circumstance, the reasons advanced by the respondent was the same was additional fee which was reasonable. However, I have perused page 4 of the typed ruling of the Taxing officer did not state reasons how did the said amount reached, thus to me, I see the same was not justified, therefore, I thus substitute the Tshs. 1,500,000/= awarded by the taxing officer to Tshs. 1,000,000/= as instruction fees.

Other complaints by the applicant were that costs of transport, food and accommodation should have included in the instructions fee. In my view the above may be awarded at the discretion of the taxing master as per eighth schedule of the above remuneration order and eleventh schedule at item 1 (m) (aa) of the same order. I have considered the above, as rightly submitted by the applicant's counsel, the same was charged at Tshs. 100,000/= which in my view is reasonable and fair under the circumstances stated. Other items taxed was not complained of remain intact.

In the above premises, I find an order of the taxing master awarding Tshs. 1,500,000/= instruction fee as said above not justifiable and I reduced it to 1,000,000/= which is legal. In respect to the remained taxed

amount remained undisturbed. Thus, the total awarded amount is therefore substituted from Tshs 2,624,000/= to Tshs. 2,124,000/=.

In conclusion, and for reasons stated herein above, I find the application succeeds only to the extent stated above. In the circumstances each party to bear own costs.

It is so ordered.

**DATED** at **MOSHI** this 14<sup>th</sup> day of December, 2023.



X

JUDGE  
Signed by: A. P. KILIMI

**Court;** Ruling delivered in the presence of Gidion Mushi for Applicant also holding brief of Goodluck Waziri for respondent, both applicant and respondent absent. Also the right of appeal duly explained to parties.

**Sgd: A. P. KILIMI**  
**JUDGE**  
**14/12/2023**