

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

**MUSOMA SUB-REGISTRY**

**AT MUSOMA**

**CIVIL APPLICATION NO. 7797/2024**

**BETWEEN**

**KERENGE PHINIAS.....APPLICANT**

**AND**

**THOMAS MARTINUS..... RESPONDENT**

**RULING OF THE COURT**

*15/05/2024 & 30/05/2024*

**Kafanabo, J.:**

This is an application for reference from a decision of the District Land and Housing Tribunal for Musoma (hereinafter the DLHT) dated 8<sup>th</sup> March 2024 in a Taxation Cause No. 193 of 2022 originating from a Miscellaneous Land Application No. 21 of 2022 of the DLHT.

A brief background of the matter is that the Respondent instituted legal proceedings against the Applicant at Musanja Ward Tribunal on a land dispute vide Land Case No. 07/2021. The Application was heard and determined ex-parte and in favour of the Respondent who, later on, applied for execution in the DLHT through Application No. 21/2022. The said application for execution in the DLHT was also determined ex-parte against the Applicant. The DLHT determined the said application and granted costs to the Respondent. The Respondent presented a bill of cost vide Taxation Cause No. 193/2022 in the DLHT (hereinafter referred to as the 'bill of costs')

which was determined in favour of the Respondent, and the Applicant was ordered to pay Tanzania Shillings (TZS 3,310,000/=) which was claimed by the Respondent as costs.

The Applicant being aggrieved with the decision of the DLHT filed the Application for reference challenging the decision of the Taxing Officer. The grounds advanced in the Application were that the Taxing Officer erred in fact for failure to consider that the Respondent failed to tender the relevant documents that could prove the costs allegedly incurred in the conduct of the application for execution No. 21/2022. That the taxing officer erred in fact for failure to consider that there was no proof or evidence of transport expenses, and that, generally, the claim for costs was excessive.

The Respondent filed his counter affidavit as per the order of the court disputing the contents of the Applicant's affidavit supporting the Application. In this application for reference, the Applicant prays for the following major order:

*That this honorable court be pleased to make reference(sic) to the order of cost awarded by the taxing officer and deduct(sic) the cost awarded to the respondent by the taxing officer.*

After a review of the decision of the DLHT in Taxation Cause No. 193 of 2022, the record of the said taxation cause, and Miscellaneous Land Application No. 21 of 2022 of the DLHT, from which the taxation cause originates, this court has noted the following:

1. The bill of costs in the said taxation cause claimed payment of TZS 6,660, 000/= being the total costs alleged to have been incurred by the Respondent regarding the application for execution.
2. Each item on transport costs in the said bill of costs claimed TZS 200,000/= but the taxing officer taxed the same at TZS 150,000/=.
3. The item on advocates fee was TZS 5,000,000/= but the taxing officer taxed the same at TZS 2,000,000/=.
4. Other items such as filing fees, preparation of the bill of costs, and communication allowance were taxed as presented by the Respondent.

Given the above, it should be noted that apart from the costs of preparation and filing of bill of costs whose records are in Taxation Cause No. 193 of 2022, the rest of the items are in respect of Miscellaneous Land Application No. 21 of 2022 of the DLHT.

It is, therefore, noted that in Taxation Cause No. 193 of 2022, there is proof of payment of TZS 46,000/= as costs of filing the bill of costs via a receipt dated 06/07/2022. This covers item 14 of the bill of costs which the Respondent claimed TZS 20,000/= only.

In respect of Land Application No. 21/2022, there is only one receipt of TZS 20,000/= dated 21/01/2022 fees for filing an application for stay of execution which caters for item 11 of the bill of costs.

Item 10 of the bill of costs claims TZS 100,000/= for costs of preparing the application of the bill of costs which was filed in the DLHT on 06/07/2022. This court finds that it was a reasonable amount, even though no vivid receipt is available to prove the same, the work done is proved by the

Application itself. Therefore, this court is inclined not to disturb it as taxed by the DLHT.

Consequently, the decision of the DLHT on items 10, 11, and 14 of the bill of costs (making a total of TZS 140, 000/=) is upheld.

As regards the costs of Transport from Mabui to Musoma and vice-versa, as provided in items 1, 2, 3, 4, 5, 6, 7, and 8 of the bill of costs, the Respondent claimed TZS 200,000/= on each item, and the Taxing Officer at DLHT taxed the same at TZS 150,000/=. However, as rightly argued by the Applicant, there is no proof of how and when the alleged transport costs were incurred, for the court to be able to trace their veracity in the relevant record.

For instance, items 1-3 of the bill of costs were about the alleged transport costs incurred by the Respondent to meet his Advocate. However, the claims are silent on when the Respondent travelled and by which mode of transport in order to justify the costs. It is not stated in the application, also there is no proof in the court's record, and the Respondent's submissions, during the hearing of the bill of costs, were also not of assistance in comprehending the justification of the costs incurred by the Applicant.

Under the circumstances, this court finds that the Taxing Officer was wrong in awarding TZS 150,000/= for each transport item (i.e. items 1 to 8) of the bill of costs in the absence of any proof of incurring the said costs, taking into account that the travel, if any, was within the Musoma Municipality and thus an uphill task to justify the claimed amount. Further,

the whole bill of costs application is blank on the column that was supposed to indicate dates as to when those costs were allegedly incurred. Therefore, the decision of the DLHT in those items is vacated and set aside.

Reverting to item 9 of the bill of costs, which covers the advocate's fees, the same was taxed at TZS 2,000,000/= by the DLHT. The Applicant challenges the DLHT decision on the ground that the Respondent did not attach any receipt or proof of payment. However, it is not disputed that the Respondent was represented by an advocate in Application No. 21 of 2022. The said application for execution was filed on 21/01/2022 and was determined on 06/06/2022, and the execution was completed in 2023. Besides, the Application is indicated to be drawn by Julius Burton Kirigiti, Advocate, who also appeared in the conduct of proceedings representing the Respondent.

It follows that the relevant law on the instruction fees is the **Advocates Remuneration Order, 2015**. Under the said Order, there is no requirement that the decree-holder should provide proof of payment of the instruction fees simply because the law has prescribed scales which shall be adhered to by the taxing officer when exercising his/her discretion under Order 12(1) of the Advocates Remuneration Order, 2015. The said Order reads:

*'The taxing officer may allow such costs, charges, and expenses as authorised in this Order or appear to him to be necessary or proper for the attainment of justice.'*

Moreover, in addressing the discretion of the taxing officer, the Court of Appeal of Tanzania in **Tanzania Rent A Car Limited vs Peter Kimuhu**

**(Civil Reference 9 of 2020) [2021] TZCA 103 (6 April 2021)** referring to the decisions of the **Attorney General v. Amos Shavu, Taxation Reference No. 2 of 2000, the East African Development Bank v. Blue Line Enterprises, Civil Reference No. 12 of 2006** (both unreported) and **Premchand Raichand Ltd and Another v. Quarry Services of East Africa Ltd and Others (No.3) [1972] 1 E.A. 162** observed 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.'*

As regards proof of payment of instruction fees in the determination of an application for costs incurred in the conduct of the matter, the Court of Appeal, in **Tanzania Rent A Car Limited (supra)**, held that:

*"...in taxation of bill of costs there is no need of proof of instruction fees by presentation of receipts, vouchers and/or remuneration agreement because the taxing officer, among others, is expected to determine the quantum of the said fees in accordance with the cost scales statutorily provided for together with the factors enumerated above."*

Additionally, this court's decision in **Salehe Habib Salehe vs Manjit Gurmukh Singh (Civil Reference 7 of 2019) [2020] TZHCLandD 103** (20 April 2020) is also relevant.

Under the circumstances, this court finds that the Applicant's submission that there should be receipts for payment of instruction fees is misconceived. The only issue to determine now is whether TZS 2,000,000/= allowed as instruction fees by the DLHT was appropriate under the circumstances of this case.

As already intimated earlier, the discretion of a taxing officer can only be interfered with if it is proved that he exercised his discretion injudiciously, has acted upon a wrong principle, or applied the wrong consideration. In determining that in the present case, the record of Misc. Application No. 21 of 2022 is a must-review. The said record indicates that it was an application for execution of the decision of the Ward Tribunal of Musanja (within Musoma Municipality) in Land Case No. 07/2021. The DLHT ordered the Applicant to vacate the area subject matter of the dispute on 06/06/2022. However, the Applicant did not heed the order of the DLHT.

The events that followed, which are not necessary to reproduce here, are evident that the execution of the matter was complicated by the Applicant himself to the extent that the DHLT instructed the court broker to execute the eviction order in 2023. This shows that the application for execution from which costs sought to be recovered arose, took a long stint to be realized because of the Applicant's superfluous resistance which, unavoidably, elongated the process and thus extra costs were, as well, unavoidable.

Under the circumstances, this court did not find a reason to interfere with the decision of the taxing officer on the instruction fees. Therefore, the amount of TZS 2,000,000/= is confirmed as a reasonable instruction fee.

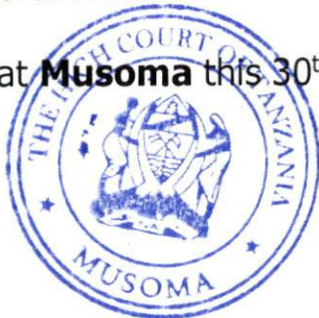
Moreover, the decision of the DLHT as regards items 12 and 13 is set aside and the said items of the bill of costs are taxed off for want of proof of incurring the alleged costs and when the same were incurred.

Therefore, in light of the foregoing, this court finds that the decision of the DLHT on items 9, 10, 11, and 14 of the Bill of costs, making a total of TZS 2,140,000/= as Respondent's costs was proper and is hereby upheld. The decision of the DHLT on items 1, 2, 3, 4, 5, 6, 7, 8, 12, and 13 of the bill of costs is set aside.

In the final analysis, the application for reference is thus allowed to the extent stated above. Therefore, the Applicant should pay the Respondent TZS 2,140,000/= as costs in respect of Land Application No. 21 of 2022 referred herein above. Save for costs which have been allowed herein, each party shall bear their own costs.


It is so ordered.

**Dated at Musoma** this 30<sup>th</sup> day of May 2024.



  
**K. I. Kafanabo**  
**Judge**

The ruling was delivered in the presence of the Applicant and the Respondent.

  
**K. I. Kafanabo**  
**Judge**  
**30/05/2024**