

IN THE HIGH COURT OF TANZANIA

TANGA SUBREGISTRY

AT TANGA

REFERENCE NO. 2 OF 2023

(Originating from the District Land and Housing Tribunal of Tanga at Tanga in Bill of Costs No. 22 of 2022)

HAPPINESS M. WILSON.....APPLICANT

VERSUS

AYOUB WAZIRI KARATA.....RESPONDENT

RULING

K.R. Mteule, J.

6/2/2024 & 22/2/2024

This is an application for Reference brought into this Court under **Order 7 (1) of the Advocates Remuneration Order of 2015, GN. No. 264 of 2015**. The Application was brought in a form of Chamber Summons supported by an Affidavit of the Applicant.

In the Chamber Summons, the Applicant is moving this Court to call for the record in Taxation of Bill of Costs No. 22 of 2022, invoke its supervisory powers for the purpose of verification and consideration of appropriateness with respect to taxation of the Bill of Costs to the tune of TZS 3,970,000/=. The Applicant is also praying for an order for costs



of this Application and any other relief that the Honourable Court may deem fit to grant.

The background of this Application is that the Applicant initially filed an Application at the District Land and Housing Tribunal of Tanga at Tanga against the Respondent which was registered as **Application No. 45 of 2019**.

It appeared that before the Application was finally determined, the Applicant prayed for withdrawal of the same. The prayer was not objected; thus, the Application was withdrawn with costs. Subsequently thereto, the Respondent filed an Application for **Bill of Costs No. 22 of 2022** comprised of 13 items. The 1st item covered a claim for instruction fees at TZS 15,000,000/=, the 2nd and 3rd items were for Advocate's appearances for mention at TZS 50,000/= each. The 4th item was claimed as TZS 50,000/= being Advocate's appearance for hearing.

The 5th and 6th items were claimed at TZS 50,000/= each being Advocate's appearance for mention. The 7th and 8th items were claims for Advocate's appearance for hearing. The, 9th, 10th, 11th items were claimed at TZS 50,000/= each being Advocate's appearance for mention. The 12th item was claimed at TZS 100,000/= as Advocate's



Appearance for hearing. The 13th item covered fees for filing the Written Statement of Defence claimed at TZS 20,000/=.

The item below the folio contained Advocate's appearance for the Bill of Costs. The Part was left blank in compliance with **Order 55 (3) of the Advocates Remuneration Order, GN. No. 264 of 2015**. The District Land and Housing Tribunal conducted hearing of the Application for Bill of Costs. In assessing the Bill of Costs, the Tribunal granted the Respondent an amount of TZS 3,000,000/= as instruction fees pursuant to Item **1 (d), of the 11th Schedule of the Advocates Remuneration Order, GN. No. 264 of 2015**. Items 3, 4, 5, 6, 7, 8, 10 and 12 were taxed as prayed and the Respondent was granted TZS 600,000/= in total. The 2nd and 11th items were taxed off following absence of the Advocate in Court.

The 13th item which covered fees for filing the Written Statement of Defence claimed at TZS 20,000/= was also taxed as presented whereas Advocate's appearance at the Bill of Costs was taxed at TZS 300,000/=. In total, the Bill of Costs was taxed at TZS 3,970,000/=.

The Applicant was dissatisfied by the amount of the Bill of Costs taxed hence preferred this Reference asserting the amount to be on excess. The Reference was objected by the Respondent who filed a Counter



Affidavit asserting that the amount taxed is reasonable. The Applicant was represented by Mr. Mohamed Kajembe, Advocate whereas the Respondent was represented by Mr. John Mseu, Advocate. Hearing was conducted by a way of Written Submissions.

In support of the Application, the Applicant submitted that the amount taxed at TZS 3,970,000/= was on the higher side basing on the grounds that the Applicant withdrew the Application at an early stage, hence the matter did not proceed with full trial.

Guided by the case of **Premchand Reichand Ltd and another vs Quarry Serves of East Africa Ltd and others** (No.3) [1972] 1 EA 162 he quoted the following passage from the case:-

"(a) costs be not allowed to rise to such a level as to confine access to the courts to the wealthy,

(b) that a successful litigant ought to be fairly reimbursed for the costs he has had to incur,

(c) that the general level of remuneration of advocates must be as such to attract recruits to the profession and;

(d) that so far as practicable there should be consistency in the awards made."

He submitted that pursuant to **Item 1 (d) of the 11th Schedule of the Advocates Remuneration Orders, GN. No. 264 of 2015,**



where proceedings were defended, the Taxing Master ought to have considered the amount which is reasonable which ought not to exceed TZS 1,000,000/=.

In response thereto, the Respondent's counsel submitted that since the matter was instituted at the **District Land and Housing Tribunal** till the same was withdrawn, almost after three years had lapsed, and that in the decision, the Taxing Master extensively discussed what ought to be taxed and thus awarded a total of TZS 3,000,000/= as instruction fees and TZS 970,000/= as Advocates appearance, court fees and fees for appearing to defend Bill of Costs.

The Respondent's counsel further argued that the Applicant's counsel did not state clearly the exact fees alleged to be taxed unreasonably and did not assign any reason to satisfy the Court that the amount taxed should not be granted.

In determining this matter, I am guided by the principle that a decision of the Taxing Master cannot be interfered unless the Taxing Master errors in principle or acts injudiciously as far as taxation is concerned.

This is according to the cases of **George Mbuguzi & Another vs A.S Maskini** [1980] TLR 53; **Tanzania Rent a Car Limited vs Peter Kimuhu**, Civil Reference No. 9 of 2020, CAT at Dar es Salaam



(unreported); **Haji Athumani Issa vs Rweitama Mutatu** [1992] TLR 372 and the case of **Preichand Reichand (supra)**

Moreover, in the case of **Asea Brown Boveri Ltd v Bawazir Glass Works Ltd and another** [[2005]] 1 EA 17 it was held that;

"A taxation reference would be entertained either on a point of law or on the ground that the bill as taxed was manifestly excessive or inadequate."

Reading the Applicant's Affidavit forming part of this Application, the Applicant is disputing the amount taxed that is TZS 3,970,000/= since the matter did not proceed to full trial as it was withdrawn at an early stage and that the counsel for the Respondent did not attach any receipt for the fees paid. This is not different from what the Applicant's counsel submitted before the taxing master.

On the other hand, the Applicant did not specify which amount was on the high side, rather he stated generally that item 1 (d) of the 11th Schedule covering proceedings which are defended to be taxed at 1,000,000/=.

For the sake of justice, despite the fact that the Applicant has not specified which item in the bill of costs contained an amount which is on the high side, I prefer to consider all parts of the Bill of Costs.



Starting with instruction fees which is item 1 of the Bill of Costs taxed at TZS 3,000,000/=, I will be guided by the case of **C.B. Ndege vs E.O Nyika & Ag** [1988] TLR 91, where it was held that instruction fee must be commensurate with the amount of time, energy and industry involved in the matter. The reason assigned by the Taxing Master in awarding TZS 3,000,000/- was that since the Respondent's counsel consumed time in conducting research and prepare himself with hearing, he taxed the amount claimed as instruction fee at 3,000,000/=.

According to item **1 (d) of the Advocates Remuneration Order**, where the proceedings are defended or to defend proceedings the Taxation Officer is supposed to consider the amount that is reasonable but not less than 1,000,000/=. Item 1 of the Eleventh Schedule provides;-

"Such fee for instructions as having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interests of the parties, complexity of the matter and all other circumstances of the case as it may be fair and reasonable, but so that due allowance shall be given for other charges raised under this Schedule."



In my view, although the matter did not proceed with full trial, the fact that the Respondent's counsel had to conduct research and the nature of the matter being a land case and contentious, considering that the matter stayed in Court for almost three years (3), all these needed to be taken into account in assessing the amount taxable for instruction fees. Further to that, the Applicant did not disclose as to what he meant by the early stage in which the matter was withdrawn. Taking all these into account, I find that the amount TZS 3,000,000/= is reasonable to cover instruction fee.

Concerning costs for attendance, It is on record that attendances were taxed as follow; item 3 at TZS 50,000/=, item 4 at TZS 50,000/=, item 5 at TZS 50,000/=, item 6 at TZS 50,000/= item 7 at TZS 100,000/=item 8 at TZS 100,000/=, item 9 at TZS 50,000/=, item 10 at TZS 50,000/=, item 12 at TZS 100,000/= and items 2 was taxed at TZS 50,000/=. I find that these amounts reasonable since according to **Item 3 (a) of the Advocates Remuneration Order, GN, No. 264 of 2015**, in ordinary cases, in 15 minutes or part thereof, the amount to be taxed is 50,000/=.

Therefore, taxing TZS 50,000/= for the mention dates is reasonable so as the amounts taxed at TZS 100,000/= for hearing dates since the



latter exceeds 15 minutes. Regarding fee for filing the Written Statement of Defence which was taxed at TZS 20,000/=, I find the same to be reasonable, equally with the amount taxed at 350,000/= as costs for filing Bill of Costs considering the nature of the application.

The Applicant's counsel raised an argument asserting failure to attach receipts to the bill of costs to prove the claims. In the case of **M/S Buckreef Gold Company Ltd vs MS Taxation Association Ltd & MS First World Investment Co. Ltd**, Misc. Commercial Reference No. 3 of 2017 (unreported), it was held that;

*"On the EFD receipts, I would like to define what EFD (Electronic Fiscal Device) is EFD is a machine designed for use in business for efficient management control in area of sales analysis and stock control systems and which conforms to the Page 6 of 12 requirements specified by law. As correctly observed by the Taxing Officer EFD receipts are more relevant in tax matters. There is no provision in the **Advocates Remuneration Order, 2015 (GN 264 of 2015)** which requires proof of payment by production of EFD's receipts. EFD receipts may be relevant when there is a dispute as to whether one pays taxes or government revenues or not. That was not the issue here."*



Moreover, in the case of **Tanzania Rent a Car (supra)** it was held that;

"On the basis of the above provision and authority I am in agreement with Mr. Kobas 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."

From the above guidance of case laws, I find that there was no relevance of tendering receipts since it is not a requirement of the law.

In finality therefore, I find reasonable the amount of TZS 3,970,000/= taxed by the District Land and Housing Tribunal for the entire bill of costs and I see no reason to interfere with the decision. The decision is thereof upheld and this reference is dismissed.



Dated at Tanga this 22nd day of February, 2024

A handwritten signature in blue ink, appearing to read "Katarina Revocati Mteule".

KATARINA REVOCATI MTEULE

JUDGE

22/2/2024

Court:

This Ruling is delivered this 22nd Day of February 2024 in the absence of the parties. The copy of the judgment is hereby shared with the parties vide the electronic case management system.




KATARINA REVOCATI MTEULE

JUDGE

22/2/2024