

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL REFERENCE NO. 25452 OF 2023

(Arising from Bill of Cost No 159 of 2023)

MWANGA HAKIKA MICROFINANCE BANK LIMITED..... APPLICANT

VERSUS

HAMZA B BYARUSHENGO..... RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Rule 7 (1) & (2) of the Advocates Remuneration Order, 2015, G.N. No. 263/2015 ("the Order"). The aggrieved applicant is moving the court for the following orders:

1. That, the honorable judge of the High Court be pleased to quash and set aside the decision of the taxing officer (Hon. Luambano -Taxing Officer) in respect of Bill of costs No. 159 of 2023, dated 25th October 2023, as he applied wrong principle of taxation of bill of costs, for failure to interpret Order 48 of the Advocate Remuneration Order, 2015, hence reached into erroneous decision;

2. That, the Taxing Officer erred in law to award excessive attendance fees contrary to Item 3(a) of the 8th Schedule to The Advocate Remuneration Order, 2015;
3. That, the taxing officer exercised his discretion illegally to tax TZS 1,000,000/= as for filing bill of costs without any legal justification;
4. The Costs of this reference be provided; and
5. Any other relief (s) the court may deem fit and just to grant.

The application was supported by an affidavit deponed by Mr. Cleoplace James, learned advocate for the applicant while Mr. Ashiru Lugwisa, learned advocate represented the Respondent. On their part the respondent opposed the application by a counter affidavit deponed by Mr. Ashiru Lugwisa. Hearing of the application proceeded by way of written submissions.

In his submission to support the application, Mr. Cleophas submitted that in his decision, the taxing officer (Hon. Luambano-Taxing Officer) applied wrong principle of taxation of bill of costs, for failure interpret Order 48 of the Advocate Remuneration Order, 2015, hence reached into erroneous decision. He argued that the Respondent was not entitled to any costs on the grounds that, the costs was not fair and not within the scales. He then elaborated that the Respondent presented a total of TZS 33,085,515/= as bill of costs and was awarded TZS 22,045,515/=. He then argued that the

disallowed amount is TZS 11,040,515/= which is more than one-sixth of the total amount of bill of costs presented by the Respondent. By simple calculation, he submitted, the calculation is $1/6 \times \text{TZS } 33,085,515/= 5,642,525/=$. Therefore, the taxing master having disallowed more than one-sixth of the amount claimed, he was duty bound in his decision to take into account the provision of Order 48 of the Advocates Remunerations Order, 2015 which 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".

He supported his submission by citing the case of **Zitto Zuberi Kabwe & 2 Others vs Attorney General, Misc: Civil Application No 15/2021**, HCT Unreported where at page 10 the court held that,

"It is obvious that the bill of cost which was denied (disallowed) is more than one -sixth of the amount claimed. Hence, the respondent was precluded from being awarded any costs."

He further cited the case of **Efc Tanzania Microfinance Bank Ltd vs Peter Zacharia, Reference No. 21/2023** and the case of **Elizabeth Tito & Another vs Agnes Erasto Malugwa**, Civil Reference No. 06/2022, HCT where the same position was held. He then argued that the disallowed amount to a tune of TZS 11,040,515/= being more than one sixth (TZS 5,642,525/=.) of the total amount presented to a tune of TZS 33,085,515/=, the Respondent was not entitled to any costs in term of Order 48 of the Advocates Remuneration Order, 2015.

With regard to the attendance fee, Mr. Cleoplace submitted that the taxing officer taxed TZS 100,000/= as attendance fees making a total of TZS 4,000,000/=. In disregard of item 3(a) of the 8th Schedule to the Advocates Remuneration Order, 2015 which provide scales for attendance fees of TZS 50,000/= for each 15 minutes. He went on submitting that the Respondent failed to prove that, he spent more than 15 minutes to justify the award of TZS 100,000/= as there is no scale for hearing or mention. The scale provides that the costs for attending the court for hearing for the first 15 minutes is TZS. 50,000/= means that if a party attends court either for hearing or mention and spends not more than 15 minutes his entitlement is TZS. 50,000/=.

Order 46 of the Advocates Remuneration Order, 2015 provide that;

"All bills of costs shall be taxed on the prescribed scale, unless a Judge of the High Court, for special reasons to be certified, allows costs in addition to the costs provided by the scale or refuses to allow costs or allows costs at a lower rate than that provided by the scale."

Therefore, the taxing officer applied wrong principle in awarding the costs for attendance. He taxed costs for attendance not based on the time spent but on the purpose of attending the court contrary to, Item 3(a) of the 8th Schedule to the Advocates Remuneration Order, 2015.

On the award of TZS 1,000,000/= as costs of application for bill of costs, Mr. Cleoplace submitted that there was no justifiable reasons advanced by the Taxing Officer for awarding such amount. That the taxing officer was supposed to exercise his discretion judicially and that he failed to justify the award of TZS 1,000,000/=.

In his conclusion, Mr. Cleoplace submitted that the amount awarded to the Respondent was manifestly excessive contrary to Order 48 of the Advocate Remuneration Order, hence, he was not entitled to any costs. His prayer was that the decision of the taxing officer be quashed and set aside and the Respondent be condemned to pay the costs of this application.

In reply, Mr. Lugwisa submitted that Mr. Cleophace's submissions clearly demonstrates his misconception of Order 48 Advocates' Remuneration Order. He went on submitting that from the provision (Order 48 of the Remuneration Order) the following two principles can be deduced; one is that when more than $\frac{1}{6}$ of the total amount of costs exclusive of the court fees is disallowed, then the applicant shall not be entitled to costs of such taxation. Secondly is that a taxing master has the discretion to disregard instruction fees in the computation of the $\frac{1}{6}$. That in simpler terms, the Taxing Master is not obliged in law to follow this $\frac{1}{6}$ rule when it comes to instruction fees. From the above principles, his argument was that it can be concluded that; one, the $\frac{1}{6}$ principles only applies to costs of taxation and not the entire bill of costs as there is a difference between the two. That Costs of taxation refers to the costs incurred in prosecuting the bill of costs whereas the entire bill of costs refers to the entire quantum of costs presented for taxation. Secondly, he argued that the taxing master is not legally obliged to follow the $\frac{1}{6}$ rule on instruction fees.

Based on the above principles, he firmly submits that the taxing master properly exercised his discretion in making the decision and cannot be faulted merely on the basis that he did not consider Order 48 as argued by

the Applicant. On the cited cases of **Zitto Zuberi Kabwe vs. AG, Elizabeth Tito vs. Agnes Erasto Malungwa**, and that of **EFC Tanzania Microfinance Bank Ltd vs. Peter Zakaria Samo** are distinguishable because they all emanate from this court and thus not binding. He argued that the Applicant's interpretation of Order 48 of the Remuneration Rule goes against the principle that a successful party is entitled to costs of litigation as it was decided in **Afriscan Group (T) Ltd vs. Said Abdallah Msangi and Another [2016] TLS LR at page 458** where it was held thus;

"The general rule regarding cost is that a successful party must have its costs. The court must assign reasons for departing from this general rule as envisaged under section 30(2) of the Civil Procedure Code... the general rule is that costs should follow the event and the successful party should not be deprived of them except for good cause."

Mr. Lugwisa then submitted that an order for payment of costs is normally made by the judge presiding over the case and that it would be a usurpation of powers for the taxing officer to deny costs that have already been ordered by a trial judge. That one may be tempted to argue that the spirit behind Order 48 of the Remuneration Rules is to discourage or prevent

parties from exaggerating claims by trying to enrich themselves, but that does not justify the absolute deprivation of costs for exaggerating such costs. That a Taxing Master has been empowered under the Remuneration Order to allow such costs which he thinks are reasonable and fair and they correspond with scales provided under the Remuneration Order as provided for under Order 46. Therefore, he submitted, the question of exaggeration or enrichment can be regulated by the Taxing master under the remuneration order and this is exactly what the taxing master did in his decision.

On the attendance fees and the costs of attending the bill of costs, Mr. Lugwisa replied that the criticisms are unwarranted and devoid of merits. That the said fees for attendance and costs of attending bill of costs were substantiated and proof of the same was provided thus the taxing master properly taxed the said items, which he was satisfied that the rules were compiled with. He concluded his submission praying for this court to dismiss the application with costs for want of merits.

Having considered the submissions of parties, I will start with the last submission of the Mr. Lugwisa, that Order 48 of the Remuneration Rule goes against the principle that a successful party is entitled to costs of litigation

as it was decided in **Afriscan Group (T) Ltd vs. Said Abdallah Msangi and Another [2016] TLS LR**. With respect to the learned Counsel, both the cited case and his argument are highly misconceived. In the cited case of Afriscan group the Court emphasized that a successful party must have his costs, however, the principle is not open ended as to costs to be awarded. An order for costs is declared by the trial court but how those costs should be awarded are principles under the Advocates Remuneration Order and it is within the purview of what is provided under the Order that costs are awarded. This is to avoid a misinterpretation of the award for costs provided under the law and expose the losing litigant to enrichment of the successful party. Costs should not be extravagant to discourage parties to approach courts to seek their rights for fear of paying extravagant compensation to the successful party. Having made that point clear, I will now proceed to determine the substance of the application before me on the correctness and fairness of the amount taxed by the taxing master.

Mr. Cleoplace's concern was on three folds, the taxed amount, the attendance fees and the costs of filing this application. As for the attendance fees, his complaint was that the taxing officer taxed TZS 100,000/= as attendance fees making a total of TZS 4,000,000/=, in disregard of item 3(a) of the 8th Schedule to the Advocates Remuneration Order, 2015 which

provide scales for attendance fees of TZS 50,000/= for each 15 minutes. In reply, Mr. Lugwisa submitted that the said fees for attendance and costs of attending bill of costs were substantiated and proof of the same was provided thus the taxing master properly taxed the said items, which he was satisfied that the rules were complied with.

Indeed, as argued by Mr. Cleophance, pursuant to item 3 of the 8th Schedule to the Order, the instruction fee prescribed is in ordinary cases, per 15 minutes or part thereof, Tshs 50,000/-. In his Ruling, the Taxing Master taxed Tshs 100,000/- but there I have also noted that in the Bill of Costs presented, the applicant had claimed a total of TZS. 15,955,515/= being 3% of the liquidated sum of TZS. 531,850,500/= which was claimed as specific damages in the main suit. In his Ruling, the Taxing Master taxed the whole amount of 15,955,515/=. His reference was to the time taken of five years to complete the case. He wrote at page :-

That being said I have gone through the submissions in respect to the instruction fees, but also considered the statutory scale for the original case and other factors. I concur with the Respondent's counsel that the 9th Schedule to the Advocates Remuneration Order, 2015 is not applicable to this matter. However, taking regard to other principles for consideration

stated in above cited case, I tax item 1 in a sum of TZS. 15,955,555/= basing on the nature of the case and the time spent which is about 5 years.

Therefore, time was the only factor that the Taxing Master had taken into consideration while awarding the costs. He did not take time to see that in said file, several adjournments were at the instance of the plaintiff by filing multiple applications. Further to that, the complexity of the matter did not justify the filing fee awarded because it was a transaction arising from an advanced loan. All in all, I find the awarded TZS.15,555,555/- to be on the higher side. Under such circumstances a fee of TZS 5,000,000/- would have sufficed.

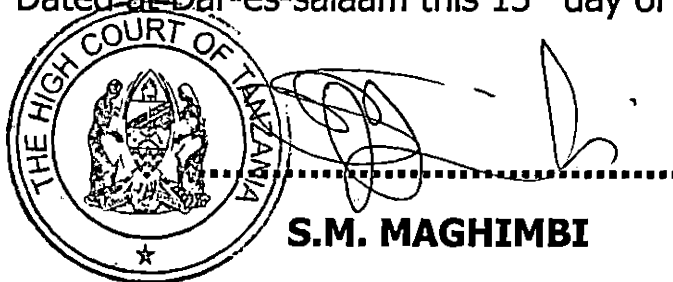
The taxing officer also taxed TZS. 4,000,000/- as attendance fees. The provisions of item 23 of the 8th Schedule to the order provides an instruction fee of TZS 50,000/- per every 15 minutes. However, the Taxing Master awarded TZS 100,000/- for the same reason that the court does not record time, it does not mean that the time exceeded 15 minutes at all time. The hearing of the case was for three (3) days. Therefore, the three hearing days would have charged 100,000/- and the remaining 37 it should have been 2,150,000/-.

On the award of TZS 1,000,000/= as costs of application for bill of costs, the Taxing Master reasoned that:

"Lastly, I am aware that the present application for bill of cost was prepared, filed and prosecuted under the care of a learned counsel, consequently I approximate and tax it in a total sum of TZS. 1,000,000/=."

The reason is not sufficient as there was instruction fees awarded and the disbursement, under the circumstances a fee of Tshs. 500,000/- would suffice. The disbursements were proved by the applicant hence rightly awarded. In total the Bill of Costs demanded would have been **TZS. 7,650,000/- and that is what is taxed.**

Dated at Dar-es-salaam this 13th day of May, 2024.



S.M. MAGHIMBI
JUDGE