

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM SUB-REGISTRY**

CIVIL REFERENCE No. 4 OF 2023

(C/f Bill Cost No. 118 of 2022 in the High Court of Tanzania, Dar Es Salaam Sub-Registry)

MULTICHOICE SOUTH AFRICA.....1ST APPLICANT
MULTICHOICE TANZANIA LIMITED
(t/a DSTV TANZANIA).....2ND APPLICANT
THE EDITOR, STATE OF ART MASSIVE STUDIO.....3RD APPLICANT
MAIMARTHA JESSE.....4TH APPLICANT
JUMA LOKOLE.....5TH APPLICANT
KWISA THOMPSON
@ KAMANDA MZEE MKAVU.....6TH APPLICANT

VERSUS

MENINA ABDULKARIM ATIKI..... RESPONDENT

RULING

Date of last Order:30-11-2023

Date of Ruling:21-2-2024

B.K. PHILLIP, J

Aggrieved by the Ruling of the taxing officer, the applicants herein lodged this application under Rule 7(1) and (2) of the Advocates Remuneration Order, 2015. The applicants' prayers are reproduced verbatim hereunder;

- i) That this Honourable court be pleased to interfere with the decision of the Taxing Officer who Taxed the Bill of Cost at the tune of Tshs. 1,540,000/= contrary to the established principles of law.*
- ii) That the Deputy Registrar in her capacity as a Taxing Officer erred in law by taxing the Bill of Cost at the tune of 1,540,000/= which in*

all circumstances was taxed manifestly low, unreasonable, and the same was taxed without considering the established principles of law.

- iii) That, the Deputy Registrar in her capacity as a Taxing Officer erred in law by taxing the Bill of Cost at the tune of Tshs. 1,540,000/= without considering that the matter was not an application but rather a contentious matter filed by way of petition.*
- iv) That cost of this application be provided*
- v) Any other orders as the Hon Court shall deem just and fit to grant.*

The application is supported by an affidavit sworn by the learned advocate Jovinson Kagwira of Hallmark Attorneys. A brief background to this application is that the applicants herein were the respondents of Miscellaneous Civil Application No. 186 of 2022, whereas the respondent herein was the applicant. On 5th October 2022, the respondent prayed for withdrawal of the aforesaid application. The applicants had no objection to the prayer but prayed for costs. Thus, the application was marked withdrawn with costs. Consequently, the applicants filed a Bill of Cost No. 118 of 2022 claiming costs to the tune of Tshs. 36,084,000/= being instruction fees, court attendance, and costs for drafting documents. Upon hearing the parties the Taxing Officer taxed the Bill of Costs to a tune of Tshs 1,540,000/=. The applicants were not satisfied with the costs awarded by the Taxing officer, hence lodged the application at hand.

In this application, the applicants were represented by the learned Advocate Simon Lyimo but the respondent never entered appearance in court despite being notified of the existence of this application. Thus, This

court ordered for ex-parte hearing of the application following the prayer made by the applicants' advocate. The application was disposed of by way of written submission.

Submitting in support of the application, Mr. Lyimo argued as follows; that the applicants filed the Bill of Cost emanating from Misc. Civil Application No. 186 of 2022 which was marked withdrawn with costs following the respondent's prayer for withdrawal of the same. The respondents sought to be paid a total amount of TZS. 38,084, 000/= comprised of

- i) Instruction fees to the tune of Tshs. 33,660,000/=
- ii) Attendance fees to the tune of Tshs. 2,230,000/=
- iii) Fees for drafting documents to the tune of Tshs. 154,000/=
- iv) Disbursement fees to the tune of Tshs. 40,000/=

He went on to argue that the Taxing Officer's computation for costs; to wit; Tshs. 1,000,000/ for instruction fees, Tshs. 500,000/= for costs for attendance in court and Tshs. 40,000/= for disbursements was erroneous. The Taxing Officer erred in taxing the instruction fees to the tune of Tshs. 1,000,000/= only in contravention of the cardinal principle law laid in the case **Tanzania Rent A Car Limited Vs Peter Kimuhu, Civil Reference No. 9 of 2020**, (unreported). The Taxing Officer applied a wrong provision of the law in taxing the instruction fees, to wit; The eleventh Schedule, Item 1 m(ii) of the Advocate Remuneration Order, 2015 which provides for the fees payable in respect of opposed applications. Mr. Lyimo contended that the Taxing Officer was misled by the registration number of the application which read as 'Misc. Civil Application No. 186 of 2022', thus assumed that the matter was a normal application whereas the same was a petition for defamation in which the respondent was claiming

compensation to the tune of Tshs. 1,122,000,000/= which falls under the category of contentious proceedings. Relying on item 8 in the ninth schedule of the Advocates Remuneration Order, 2015, Mr. Lyimo contended that the appropriate instruction fee is Tshs. 33,660,000/=:, which is 3% of amount claimed by the respondent (Tshs. 1,122,000,000/=)

In conclusion of his submission, Mr. Lyimo prayed this application to be allowed with costs.

Having analyzed the arguments made by Mr. Lyimo as well as perused the court's records, let me proceed with the determination of the merit of this application. It is worth noting from the outset that, an application for reference in respect of taxation of a Bill of Cost is maintainable only on very exceptional circumstances since the Taxing Officer is conferred with discretionary powers on the assessment of the costs tabled before him/her. In the case of **Thomas James Arthur Vs. Nyeri Electricity Undertaking [1961] EA 492** was held as follows.

"Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters with which the Taxing Officers are particularly fitted to deal and the court will intervene only in exceptional cases"

Whereas in the case of **Asea Brown Boveri Ltd Vs Bawazir Glass Works Ltd and Another [2005] 1 EA 17**, the Court had this to say on when and how the taxation should be questioned;

"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. The instruction fees should cover advocate's work, the taxing master should tax each bill on its merits, the taxing master should exercise his discretion judiciously and per applicable schedule..."

(Emphasis added)

Back to the application at hand, the main concern raised by the applicants is that since the respondent claimed payment of Tshs. 1,122,000,000/= and according to the Advocates' Remuneration Order, the 2015 instruction fee for contentious matters is 3 % of the claimed amount. As correctly submitted by Mr. Lyimo, according to the Advocate Remuneration Order, 2015, the ninth schedule, Item No. 8, the instruction fees for contentious matters over 400,000,000/= is 3% of the value of the subject matter or the claim. In the matter at hand, the claim was Tshs. 1,122,000,000/= whose 3% is Tshs. 33,660,000/=. However, it is an undisputed fact that the said Misc. Civil Application No. 186 of 2022 was withdrawn at a very early stage before the beginning of the hearing. The position of the law in the determination of the appropriate instruction fees is that, the court has to take into consideration the nature and complexity of the case. When the case is withdrawn at an early stage like the one at hand, under normal circumstances the instruction fees cannot be taxed at the maximum percentage as if there was a full trial or hearing of the case. However, although the aforesaid Misc. Civil Application No. 186 Of 2022 was withdrawn at an early stage, it is in the record that the trial judge when awarding costs noted that the learned advocates were supposed to address the court on the competency of the petition thus the applicants'

advocate had undertaken extensive research on that issue. From the foregoing, it is the finding of this court that the sum of Tshs. 1,000,000/= awarded as instruction fee is inadequate. I hereby vary the impugned decision and award the applicant a sum of Tshs.2,000,000/= being instruction fee. The rest of the Taxing Officer's orders remain intact. In the upshot, this application succeeds to the extent stated herein above.

Dated this 21st day of February 2024




B.K.PHILLIP
JUDGE