

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

GEITA SUB-REGISTRY

AT GEITA

CIVIL REFERENCE NO. 11653 OF 2024

(Arising from the Ruling in Taxation Cause No. 000003600 of 2024 of the Resident Magistrates' Court of Geita at Geita)

GEITA GOLD MINING LIMITEDAPPLICANT

VERSUS

AMINA ABDALLAH NGOLONGOLO..... RESPONDENT

RULING

Date of last Order: 30/05/2024

Date of Ruling: 14/06/2024

MWAKAPEJE, J.:

The Applicant, Geita Gold Mining Limited, is dissatisfied with the decision rendered by the Taxing Officer in Taxation Cause No. 000003600 of 2024. The Applicant is now pleading with this court to call, revise, and set aside the ruling of the Taxing Officer, which granted the Respondent a sum of Tshs. 16,030,000/= for instruction fees, attendance, submissions, and transportation expenses.

A brief background of this application: In September 2021, the Applicant financially supported the construction of a market in Katundu, also known as Mbagala in Geita. When the same was completed and

handled, the Applicant's crew took photos of the market's activities, one of which was the Respondent's, and was used in their 2022 annual calendar without her consent. The Respondent sued the Applicant for violating her privacy rights and using her likeness in commercial advertising and claimed general damages to the tune of Tshs. 560,000,000/=. The trial court awarded the Respondent Tshs. 25,000,000/= as general damages and costs of the suit.

The Respondent pursued the matter in Taxation Cause No. 0000036 of 2024 before the Taxing Officer, who granted costs amounting to Tshs. 16,030,000/= as requested. Dissatisfied with the award, the Applicant has now filed this Reference against the Taxing Officer's decision on the above grounds.

When the application came for the hearing, Ms. Elizabeth Karua, learned counsel, represented the Applicant, while Mr Liberatus Rwabuhanga, also learned counsel, represented the Respondent. Being the first to address the Court, Ms Elizabeth submitted that the Applicant applied for two primary reasons: first, that the Taxing Officer failed to exercise his discretion judiciously, and second, that the awarded costs were excessive and unreasonable.

Referring to Black's Law Dictionary, Seventh Edition, she noted that "judiciously" is defined as well-considered, discrete, and wisely circumspect. She contended that when assessing the sum of Tshs. 16,030,000, the Taxing Officer neglected to consider the case of **Anthony Ngoo and Davis Anthony Ngoo vs. Kitinda Kimaro**, Civ. Appl. No. 25 of 2014 (unreported) TZCA determined that the Taxing Officer has discretion in deciding instruction fees. She focused exclusively on instruction fees, not other related expenses, and stressed that this could be substantiated with evidence. She asserted that the discretion exercised by the Taxing Officer in determining instruction fees should be done judiciously and that the officer erred by disregarding the Applicant's submission and failing to properly evaluate the submissions and the provisions of the Advocates Remuneration Order of 2015.

Ms. Elizabeth further argued that it is a fundamental legal principle that court decisions must be reasoned to be judicious. She stated that the Court's primary responsibility is to thoroughly assess, appraise, and analyse the evidence on record and make decisions based on the evidence and submissions presented. She maintained that the decision on each item taxed from items 1-20 must be supported by reasons and that the court must exercise discretion judiciously to avoid arbitrary decisions, a principle reiterated by both this Court and the Court of Appeal of Tanzania.

She cited the case of **Hamis Rajabu Dibangula vs The Republic**, [2004] TLR 181, asserting that good judgment should be clear, systematic, and straightforward, and every judgment should be based on the submitted legal foundation. She was of the view that the ruling resulting from Taxation Cause No. 3600 of 2024 lacked reasoning, proper evaluation, and analysis to support the taxed amount of Tshs. 16,030,000/=, which is deemed excessive and unjustified.

Furthermore, Ms Elizabeth contended that there was a lack of substantial evidence presented to support the amount being taxed. Citing the legal precedent found in the case of **Said Ally vs Haidari R.Mshiha** (Reference 1 of 2021) [2021] TZHC 7042. She emphasised the necessity of providing proof of incurred expenses, as outlined in the case of **Sapi Investment Limited vs Azid Kaoneka**, Misc. Civil Reference No.4 of 2019, HCTZ (unreported). Additionally, Ms Elizabeth maintained that the Taxing Master should have considered the Applicant's argument, particularly highlighting that the Respondent's physical location is in close proximity to the Geita Residents' Magistrates Court, thus rendering excessive transportation expenses invalid. She posited that items 2-20 listed in the bill of costs should have been taxed off from taxation due to their excessive and unwarranted nature, and she urged this Court to review and set aside the Taxing Officer's decision.

Mr Liberatus opposed all the submissions made by the counsel for the Applicant. He stated that the taxation process is governed by the Advocates Remuneration Order of 2015 and that the main matter leading to the taxation dispute, Civil Case No. 10 of 2022, was decided on its merits. He noted that the total claim by the Respondent was Tshs. 560,000,000/= and the costs assessed amounted to Tshs. 16,030,000/=. He argued that Civil Case No. 10 of 2022 was in litigation for over a year and was complex due to preliminary objections raised. He referenced the case of **Leopard Burondo vs Agatha Santali** Civil Reference 10 of 2021, stating that the complexity of the case and the time taken should be considered for taxation purposes. He asserted that the assessed amount of Tshs. 16,030,000/= was appropriate for the instruction fee according to the 9th schedule of the Remuneration Order for claims exceeding Tshs. 400,000,000/=.

Mr. Liberatus maintained that the Taxing Officer has the discretion to charge 3% for a claim of Tshs. 560,000,000/= amounts to over Tshs. 16,000,000/=. He argued that for representation fees, the court does not require proof such as receipts but focuses on the scales outlined in the Remuneration Order 2015, as per the decision in **Sapi Investment Ltd vs Kaoneka** (*supra*). He contended that the costs awarded were reasonable given the complexity of the case and that the argument that

the costs were excessive and unproven was unfounded. He disagreed with the notion that items 2-20 of the Bill of Costs should have been excluded from taxation, stating that some of these items pertained to the advocate's attendance on scheduled hearing dates. He argued that the advocate's proximity to the court should not preclude them from receiving Tshs. 50,000/= for appearances, as his place of residence could justify the fee.

Mr. Liberatus concluded that the issue at hand was whether the costs awarded were reasonable in the circumstances of Civil Case No. 10 of 2021. He prayed that the court, in analysing Taxation Cause No. 000003600 of 2024, found the instruction fee of Tshs 15,000,000/= reasonable based on the scales, the duration of the main case, and the challenges faced. He argued that the costs from items 2-20 were justifiable and that the claims of lack of evaluation and reasoning in the taxation ruling fell under the jurisdiction of this court as the primary appellate court.

In her rejoinder, Ms Elizabeth reiterated that upon examining Civil Case No. 10 of 2022, the amount claimed and awarded was Tshs 25,000,000/=. She noted that the counsel for the Respondent referred to the Remuneration Order found in the Ninth Schedule under the section

titled "scales for contentious proceedings for a liquidated sum in original and appellate jurisdiction", and she pointed out that Civil Case No. 10 of 2022 was not listed in the Ninth Schedule. She argued that a thorough review of the proceedings related to the taxation matter showed that the counsel for the Respondent cited the Ninth Schedule, leading to the issuance of the disputed ruling.

Having considered the submission by the parties, the issue to determine in this application is whether the Taxing Officer's award of Tshs. 16,030,000/= to the Respondent was justified.

At the outset, I should point out that it is the Advocates Remuneration Order, 2015, which is to be applied in remunerating an advocate for all matters related to the costs emanating from the advocate-client relationship. Rule 2 of the said Order is clear and provides that:

"This Order shall apply to the remuneration of an advocate by a client in contentious and non-contentious matters, for taxation thereof and the taxation of costs between a party and another party in matters in the High Court and in courts subordinate to the High Court, arbitral tribunals and tribunals from which appeals lie to the Court of Appeal."

The said Order prescribes in the schedules the scales within which costs are to be taxed to remunerate an advocate depending on the nature of the subject matter. Rule 46 provides 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."

Guided by the foregoing provisions, it is critical for the Taxing Officers to consider specifying the Rules and respective Schedules from which they arrive at their decisions while exercising their discretion. In short he has to consider the nature of the claim before determining the matter (see the case of **Abdlatifu Salum v. Saada Mohamed (1991) TLR 119**). It is also prudent to provide reasons as to the costs awarded to a respective item to ensure transparency, fairness, and justice in a decision. This demonstrates that the Taxing Officer has carefully considered the submissions by the parties before reaching a conclusion.

Now, in the present application, the Applicant, on the second limb of her argument, submitted that the ruling by the Taxing Officer lacked reasoning, proper evaluation, and analysis to support the taxed amount of Tshs. 16,030,000/= . Mr Liberatus did not comment anything on this fact. Following this, I had time to visit the taxation cause application and the ruling by the Taxing Officer to ascertain the condition of the applicant. The Respondent (Decree holder), in her Bill of costs, submitted three items: 1, the Instruction fee to the tune of Tshs 15,000,000/=; 2-7,

attendance fee to the tune of Tsh.320,000/=; and 8-20 transport fee to the tune of Tshs. 720,000/=. After the parties had deliberated upon the same, the Taxing Officer concluded as follows:

"After taking into consideration the bill of cost presented by the decree-holder, both parties submission for and against the same, so as the Advocates Remuneration Order, the following amounts are taxed as per their items.

- (a) Item no.1: Tshs 15,000,000/=*
- (b) Items no.2-7: Tshs 310,000/=*
- (c) Items no.8-20: Tshs 720,000/=*

The taxing master hereby taxes to a tune of a Grand total of Tshs 16,030,000/=the same is so taxed."

After stating that he considered the bill of cost presented and submissions by both parties, the Taxing Officer was required to make a thorough analysis of the same, peg each of the costs awarded to the specified scales of the respective schedules, and provide reasons for his ruling. I, therefore, agree with Ms Elizabeth that the Taxing Officer did not consider the arguments presented, including the fact that the claim was for general damages and the fact that the costs awarded for transport were excessive, bearing in mind that the Respondent's office is just opposite the Resident Magistrate's Court premises. This is evidenced in

the address of the counsel for the Respondent indicated in the bill of costs, which was:

"DRAWN AND FILED BY

.....

Interland Attorneys

Opp, Geita RM Court

Nearby Geita District Council

P.O.Box

Geita..... "[Emphasis supplied]

Had the application and parties' submissions been considered, the Taxing Officer could not have ruled as such. In this application, therefore, the Taxing Officer's discretion was not judiciously exercised, as there were no reasons and justifications for the decision reached.

It is trite law that the costs awarded by the Taxing Officer are not to be interfered with unless the same acted on the wrong principle, especially on the quantum. In such circumstances, the superior court can step into the shoes of the taxing master. See the cases of **Kitinda Kimaro vs Anthony Ngoo and Another** (*supra*) and **Gautam Jayram Chavda Vs. Covell Mathews Partnership**, Taxation Reference No. 21. 2004 (unreported). Specifically, in the case of **Gautam Jayram Chavda Vs. Covell Mathews Partnership**, in which the Court of Appeal cited the decision of the **Thomas James Arthur vs Nyeri Electricity Undertaking** [1969] EA 492, which stated that:

"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 circumstances."

As stated herein, in the present application, the award primarily consisted of the three items. Regarding the instruction fee, Ms Elizabeth argued that it was incorrectly taxed under the ninth schedule, which is typically used for determining fees in proceedings for a liquidated sum in both trial and appellate courts, a situation that did not apply to the main claim in question. Conversely, Mr Liberatus maintained that the ninth schedule was appropriate given the complex nature of the claim and that the damages sought exceeded Tshs. 400,000,000/=, whose fee is 3%.

However, I respectfully disagree with Mr. Liberatus. As Ms Elizabeth pointed out, the main claim did not involve predetermined damages warranting the application of the ninth schedule; see the cases of **Southern Highland Earthworks Company Ltd vs UAP Insurance Tanzania Ltd** (Taxation Reference 1 of 2021) [2022] TZHC 131, and **WellWorth Hotels and Lodges Ltd vs East Africa Canvas Co. Ltd & 4 Others** (Commercial Case No. 107 of 2020) [2023] TZHCComD 197. To

me, the proper principle to be applied in the circumstances of the case emanating from a tortious liability claim is Rule 41 and the Eleventh Schedule, especially paragraph 1(k) of the Advocates Remuneration Order. Paragraph 1(k) reads:

"To sue or defend in any case not provided for above":

The instruction fee referred to in this paragraph is denoted as "As illustrated above". The fee outlined in paragraph 1(k) corresponds to paragraph 1(j), which is not exceeding Tshs. 1,000,000/= . It is worth noting, as articulated by Mr Liberatus, that in instances of complexity, the taxing master holds the discretionary power to take this into account. Nonetheless, I am unconvinced that this issue was intricate, particularly involving the arguments pertaining to preliminary objections. Upon reviewing the proceedings of the main case, I observed that the preliminary objections raised by the Applicant were not intricate, focusing on the non-signing of the plaint by a legal representative and the characterisation of general damages as non-punitive.

Furthermore, there is no evidence to suggest that Mr. Liberatus exerted significant effort and conducted thorough research. Beyond the objections, the main case featured four witnesses, two from each party, who provided testimony in court. Additionally, the duration taken to litigate the case was close to 12 months, influenced by a series of

adjournments. In the end therefore, according to the scale provided, the taxed amount on the instruction fee as provided for in the Eleventh Schedule is Tshs. 1,000,000/= and therefore Tshs. 14,000,000/= is taxed off as the same is unlawful.

In relation to items 2-7, the awarded costs amounted to Tshs. 310,000/=, covering fees for attending the court registry to follow up on the registration of the plaint; fees for attending the preliminary objections hearing; fees for attending the pre-trial conference, mediation, and final pre-trial conference. The applicant requests that these items, along with transportation costs under items 8-20, totalling Tshs. 720,000/=, be taxed off. Since items 2-7 are distinct and the counsel fulfilled his duties, I see no reason to alter the Tsh 310,000/= sum determined by the Taxing Officer.

As for transport costs, encompassing items 8-20, I find it perplexing as to what means of transportation Mr. Liberatus employed, considering that his offices are directly across from the RM's Court. It simply involves crossing the road unless he has agyophobia, which, however, was not substantiated. Nevertheless, even if he took a taxi, he should have justified the use of Tshs. 50,000/= as transport costs. Furthermore, I do not agree with Mr. Liberatus' claim that the same amount covered his

commute from his residence to the court. Transportation costs should be calculated from his office to the court, as he would need to go to his office even if he was not engaged by the Respondent. Also, item 20 for attendance on receiving a judgment cannot be to the tune of 120,000/= as it is not different from other transport costs. Therefore, Tshs 30,000/= is taxed off for items 8-19, and Tshs 100,000/= is taxed off for item 20 of the Bill of Cost. Therefore, the total amount taxed for items 8-20 is Tshs. 260,000/=.

In consideration of the foregoing, this application is allowed. I quash the ruling delivered by the Taxing Master on 30th April 2024 in Taxation Cause No.000003600 of 2024. Finally, the total taxed amount, therefore, becomes Tshs. 1,570,000/=. I make no orders as to costs.

It is so ordered.

DATED and **DELIVERED** at **GEITA** this 14th June 2024.



G.V. MWAKAPEJE
JUDGE

This Ruling is delivered this 14th day of June 2024 in the presence of Ms Elizabeth Karua, Advocate for the Applicant, and the Respondent in person.



G.V. MWAKAPEJE
JUDGE