

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

CIVIL REFERENCE NO. 29 OF 2023

(Originating from Ruling in the Bill of Costs No. 161 of 2021, J. D. Luambano, DR)

DESDERY ISHENGOMA.....APPLICANT

VERSUS

SCHOLASTICA MSEKWA.....RESPONDENT

RULING

Date of last order: 16/04/2024

Date of Ruling: 20/06/2024

A. A. MBAGWA, J.

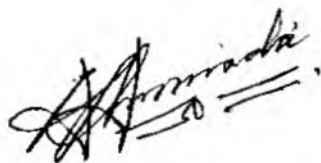
The applicant herein DESDERY ISHENGOMA, by way of chamber summons, brought this application under Rule 7 (1) and (2) of the Advocates Remuneration Order GN No. 264 of 2015 praying before this Honorable Court for the following orders: -

- a. The Honourable Court be pleased to set aside the Taxation Ruling in the Bill of Cost No. 161 of 2021 dated 3rd August 2023;
- b. Alternatively, the Honourable Court be pleased to reduce the taxed amount of Tshs. 2,170,000 to a reasonable amount of Tshs. 500,000;
- c. Costs of this Reference be borne by the respondent



The application was supported by an affidavit sworn by the applicant himself. In contrast, the respondent contested the application via a counter affidavit sworn by herself refuting all the facts in the applicant's affidavit.

The brief facts that resulted in the instant application may be recounted as follows; The applicant was dissatisfied with the decision of the taxing officer in Taxation Cause No. 161 of 2021. The said Taxation Cause was heard *inter partes* and ultimately the taxing officer taxed a total sum of TZS 2,170,000/= out of TZS 6,910,000 which was claimed by the respondent. The total sum was arrived at after taxing different items as follows; TZS 1,000,000/= for instruction fees, TZS 650,000/= for court attendance, TZS 20, 000/= for court fees, and TZS. 500,000/= for the bill of costs. Aggrieved by the decision of the taxing officer, the applicant preferred the present reference. During the hearing of this application, the applicant was represented by Mr. Peter Kaozya, the learned advocate whilst the respondent was absent. When called upon to address the court, Mr. Kaozya prayed for the hearing of the application to proceed *ex parte* against the respondent for the reason that he was absent without justifiable cause. I granted the prayer and ordered the hearing of the application to proceed *ex parte* against the respondent due to her absence without notice.

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Having adopted the affidavit, Mr. Kaozya did not have much to submit. He told the court that the main applicant's grievance was based on rule 48 of the Advocates Remuneration Order which is to the effect that where more than 1/6 of the claimed amount is taxed off, the whole bill of costs should be rejected. Finally, the applicant's counsel prayed the court to revise the decision of the taxing officer and disallow the whole taxed amount.

I have keenly heard the submissions by the learned advocate for the applicant in support of the reference. I also had an occasion to go through the depositions and the court record, in particular the ruling in Taxation Cause No. 161 of 2021.

On pages 6 -7 of the impugned decision, the taxing officer held;-

*"I concur with the respondent's counsel that this matter is taxed according to item 1(I) of the 11th Schedule of the Advocates' Remuneration Order, 2015 as it emanates from appeal. **The amount provided in the cited scale is Tshs. 1,000,000/= for an opposed appeal. That being said, I find the claimed amount to be unreasonable and therefore, tax item 1 in the total sum of Tshs.1,000,000/=, the rest is taxed off."***
(Emphasis Added)

Under paragraph 9 of the affidavit in support of the application, the applicant complains that the taxing officer did not address or decide on his submission that the entire bill of costs ought to have been dismissed according to Order 48 of the Advocates Remuneration Order.

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Order 48 of the Advocates Remuneration Order provides thus;

"48-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". (Emphasis Added)

The above provision is louder and clear that where one-sixth of the bill of costs is taxed off, the party presenting the bill is not entitled to any costs. In this application, it is common cause that the applicant claimed a total of 6,910,000/= but in the end, only TZS 2,170,000 was taxed. This tells it all that more than one-sixth of the claimed amount was taxed off. However, the taxing officer has the discretion to exclude the instruction fee from the computation of the one-sixth.

It is a settled law that in the matter challenging the decision of the taxing officer, the Court is not entitled to interfere with the discretion of the taxing officer unless the taxing officer acted on a wrong principle or the taxed amount was excessively low or high. See **Tanzania Rent a Car Limited vs Peter Kimuhu**, Civil Reference No. 9 of 2020, CAT at Dar es Salaam, **Attorney General vs Amos Shavu**, Taxation Reference No. 2 of 2000 and

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Ecobank Tanzania Limited vs Double Company Limited and Three Others, HC, Commercial Division at Dar es Salaam. I have strenuously reviewed the ruling and I do not see good reasons to disturb the decision of the taxing officer. In my considered view, the amount taxed was fair and within the confinement of the law nor was there any violation of the principle of law.

All the above considered and being guided by the decisions of the Court of Appeal in **Tanzania Rent a Car Limited (supra)**, I find this reference without merits and consequently, I dismiss it. I make no order as to costs so as to bring the matter to an end.

It is so ordered.

The right of appeal is explained.

Dated at Dar es Salaam this 20th day of June 2024.




A.A. Mbagwa

JUDGE

20/06/2024