

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 274 OF 2002

IMPERIAL INSURANCE COMPANY LTD...PLAINTIFF/DECREEHOLDER

VERSUS

NIKKI TELECOM & POWER

TECHNOLOGIES LTDDEFENDANT/JUDGMENT DEBTOR

RULING

J.R. Kahyoza Taxing Master

The decreeholder **Imperial Insurance Company Limited**, who was a plaintiff, filed a bill of costs consisting of 57 items claiming a total amount of Tshs. **15,020.072/=** against the judgment debtor, **NIKKI Telecom & Power Technologies Limited**, who was a defendant in that case.

I will commence with item no. 1, where the decreeholder/Plaintiff claimed instruction fees of tshs. 7,989,600 to institute the suit. The decree holder's advocate submitted that the amount claimed was above the scale provided by **Schedule IX of the Advocates' Remuneration and Taxation of Costs Rules GN 515/91**. The scale allowable was 3% of the amount claimed i.e tshs. 1,522,199.10. The decree holder's advocate invited the court to vacate from the scales provided submitting that the rules have been overtaken by time. I quote

“since the enactment of the Rules in 1991 the Tanzania shilling has been devalued by almost 200%, such that the amount of Tanzanian shilling One million, Five Hundred Twenty Two Thousand, One hundred and ninety nine and ten cents cannot adequately cover basic needs for an individual let alone legal fees to prosecute a suit such as this one”

It was averred further that the amount of tshs. 1,522,199.10 awardable as instruction fees, if the scale was to be applicable, were realistically insufficient and unattractive to cover professional legal fees for the Plaintiff in the suit, which was concluded approximately for two and half years. He cited the case of *Premchad Raichand Versus Quarry Services of East Africa Limited* (1971) E.A. 172 saying that the taxing master has to strike a balance between access to justice and fair remuneration to lawyers. He quoted the following paragraph from the above named case.

“I may wish last but not least to add a commentary here that crucial as it is in the rule of law, and sector of administration of justice, such legal representation should not and cannot be taken as charity in which case, few younger lawyers will refrain from enrolling in the bar, but courts are bound to take care also of those lay people and economic disadvantaged, as they sometimes resort to self style of dispute settling.”

The judgment debtor's advocate resisted the claim under item no. 1 arguing that the claimed amount was excessive. He contended that the decree holder is entitled to 3% of the liquidated claim as provided by the Schedule IX of the GN 515 /91 which was tshs. 1.522,199.10.

The issue here is whether the taxing master can award an amount over and above the scale provided in the Rules. I will answer this issue affirmatively, notwithstanding the provision of rule 45 of G.N. 515 /91 which provides as follows:-

“All bills of costs shall be taxed on the prescribed scale, unless a judge of the High Court certified on special grounds arising out of nature and importance or the difficulty or urgency of the case that they are to be taxed on the Higher Scale”.

It is my considered opinion that a taxing master can award an amount above the scales provided in GN. 515/91. The scales in the Rules have been overtaken by time to apply scales as they may cause injustice to decree holders. I find refuge in the case of **MGS International (T) Limited Versus Halais Pro-Chemie Industries Limited**. Commercial case no. 3 of 2003 (unreported), where His Lordship Judge Kalegeya (as he then was) stated. I quoted in extensio:-

“Thus I have no spec of doubt that Mr. Shikely’s proposition, with respect, cannot be correct. Provided a taxing master is guided by the principles already summarized above and decides judiciary, in a fitting case, there is nothing, legally, that would bar him from awarding amounts higher or lower than those prescribed under the scheduled scales under G.N. 515/91. And, indeed, outdated as obviously these scales are, the expected and generally awardable amounts would be on the higher side as compared to those prescribed under the scheduled scales”.

I therefore, wish to make it clear that throughout the taxation of this bill of costs, the outdated scales in **GN. 515/91** will not guide me but factors stated herein under. The abundant authorizes which discussed factors to be considered by the taxing masters when deciding the issue of instruction fees, provided the following to be factors for consideration:

“the suit amount, the nature of case/subject matter, its complexity, time taken for hearing/arguments, amount of research involved”. See the case of George Mbuguzi and Another Versus A.S. Mashini (1980) TLR 53; Thomas James Arther Versus Nyeri Electricity Undertaking (1961) E.A. 492, Rahim Hashan Versus Alibhar Kaderbhai (1938) T.L.R (R) 676; Premchad Raichand Versus Quarry Services of East Africa Limited (1971) E.A. 162; The Attorney General Versus Amos

Shavu Taxation Reference No. 2 of 2000 CAT (unreported). The case of **MGS International (T) Limited Versus Halais Pro-Chemie Industries Limited**. Commercial case no. 3 of 2003 (unreported) has since added another fact for consideration when taxing instruction fees that is the parties' behavior. I quote:-

“the parties general behavior in attendances and abiding by the set schedules including their seriousness or otherwise in quest for expeditious disposal of the controversy” should be taken into consideration.

Guided by the fact that the purpose of taxation is not to punish but reimburse the successful one and having considered the time this case has taken from 2002 to date, I find the amount of tshs.4,000,000/= reasonable. Thus, I tax item no.1 at tshs. **4,000,000/=** and tax off the rest.

The decree holder claimed tshs. 20,000/= as costs for attending in court for either perusal of court files or mention or hearings or filing of documents. Such claims are found under items no. 3,6,7,10,11,13,14,15,16,17,18,20,21,22,23,24,25,26,27,29,30, 32,34,35,36,37,38,40, and 41. The judgment debtor's advocate resisted the claim of tshs. 20,000/= for appearance on the ground that the same was excessive and not supported by receipts. He averred further that the decree holder's advocate could hardly spend half the claimed amount to make court appearance. He prayed to this court to apply the cases cited by the decreeholder to

determine the costs of appearances. The cases referred were ***Jubilee Insurance Company of Tanzania vs. DHL Tanzania Ltd*** High Court (T) Commercial Division Commercial case no.16/2003 (Unreported) and ***Mohamed Hussein Suleiman vs. The Agha Khan Hospital*** High Court (T) at Dar es Salaam Civil Case no. 292/2001 (Unreported) where an amount of tshs. 10,000/= was awarded per appearance. Costs of appearance is more than transport costs, it includes compensation for time taken for hearing or mention and not forgetting for waiting time for a particular case to be called before the trial judge. Mindful, of what the cost of appearance includes, I find Tshs. 10,000/= per appearance reasonable. I have also taken into consideration the fact that the alleged costs were incurred in the year 2002 and 2003. Hence, items no. 3, 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32, 34, 35, 36, 37, 38, 40, and 41 are taxed at tshs. 10,000/= each and the rest of the amount are taxed off. Therefore, I award an amount of tshs. **290,000/=** in total.

That done, I will now consider claims under items no. 2, 4, 5, 8, 19, 28, 31, 33 and 39 which cover costs for perusal of documents and drawing of documents. I will consider items no 2, 5 and 8 which refer to drawing of pleadings for instituting a suit. I carefully considered the claims for drawing pleadings such as Plaintiff and Chamber Summons and formed an opinion that those claims are part and parcel of item no.1 i.e., the claim for instruction fees. Once an advocate takes, instruction to sue it is understood that he has to

draw pleadings and counter pleadings from the other party. Allowing claims under items 2, 5 and 8, will be tantamount to punishing the judgment debtor by imposing double payments. This will be against the purpose of taxation which **“to reimburse the successful party and not punish the unsuccessful one”** (See the case of Wambura Chacha Versus Samson Chorwa). Thus items no. 2, 5 and 8 are disallowed.

I will turn to items no. 4 and 19 under which, tshs. 20,000/= was claimed for each item as costs for attending court to peruse court's records, for reasons stated above while discussing costs for appearance for mention, I tax them at 10,000/= each. An amount of Tshs. 20,000/= is awarded for both items. The rest is taxed off.

The decree holder claimed for tshs. 400,000/= under item 28 for preparing summation and producing four copies thereof. The amount claimed was on high side. The submission was eight pages, truly it must have costed my learned friend's time to prepare it. However, the fact that no authority was cited is enough evidence that no much research was involved in preparing the submission. As a result, I find it reasonable to award an amount of tshs. 200,000/= for preparing the summation. Thus, item no. 28 is taxed at tshs. 200,000/= and the remaining is taxed off.

Under items no. 31, 33 and 39 the decree holder claimed costs for drawing applications for execution and drafting a bill of costs. The costs under these items unlike the claim for drawing

Plaint and Chamber Summons during the institution of suit can be allowed. Costs for drawing a Plaintiff is part of the instruction to sue but costs for drawing an application for execution is not as not in all suits filed, the plaintiff emerges a decree holder and therefore draws an application for execution and institutes a bill of costs. In the circumstance and bearing in mind the year when the said costs were incurred that is 2003, I will award tshs. 30,000/= for each item. Hence, items no. 31, 33 and 39 are taxed at tshs. 90,000/= in total.

I will consider items no. 42 to 47, which are claims for disbursement. The applicant did not annex copies of or mention exchequer receipts number for each item in the bill of costs. The requirement to produce supporting documents is provided by Rules 4 and 55(1) of the ***Advocates' Remuneration and Taxation of costs Rules 1991 (GN 515 of 1991)***. The Rules require the bill of costs to be supported by vouchers and receipts. Since there is in the court record a first carbon copy of exchequer receipts for items no. 42 – 47 of the bill of costs, I rule out that the omission is not fatal and precede to tax items no 42 to 47 as presented. Thus, I award an amount of tshs. **2,583,344.30**.

I will now consider the last claim of 18% VAT on the claimed amount. The advocate's firm in question may be and I know it is a registered taxpayer but I do not think it is register agent of VAT. The decree holder has a duty to proof the allegation that his the firm was a registered agent of VAT; the fact that the judgment

debtor did not challenge the claim does not prove the decree holder's claim by itself.

In the upshot, this bill of costs is taxed at Tanzanian shillings Seven million one hundred and eighty eight thousand, three hundred and forty five only **(7,188,345/=)**.

It is so ordered.

sgd
J.R. Kahyoza
RCC
15/Dec./2010

COURT. Ruling delivered at **11: 30 am**, in the presence of **Mr. Ndege** adv. for decree holder and the Judgment debtor is absent.

COURT CLERK . Mr. Kanyochole Present

I apologize for the failure to deliver this ruling as was scheduled at 09:00 am. I as the same was not complete at time.

SDG
J.R. Kahyoza
RCC
15/Dec./2010

I Certify that this is a true and correct
of the original/order Judgment Rulling
Sign:.....
Registrar, Commercial Court. DSM.
Date:..... 15/12/10

