

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT PAR ES SALAAM

COMMERCIAL REFERENCE NO. 13 OF 2022

(Arising from Taxation Cause No. 78 of 2021)

BETWEEN

EQUITY BANK TANZANIA LIMITED1st APPLICANT

EQUITY BANK KENYA LIMITED2nd APPLICANT

Versus

STATE OIL TANZANIA LIMITED DEFENDANT

Date of last Order: 24th November 2022

Date of Ruling: 30th November 2022

RULING

MKEHA, J:

In the present application, the applicants are moving the court by way of reference to make a finding that the ruling of the Taxing Master (sic) in Taxation Cause No. 78 of 2021 dated 4th August, 2022 is improper for being unreasonable, having been made in contravention of the principles of taxation of Bill of Costs. The applicants are further moving the court to set aside the decision of the taxing master (sic) and thereby proceed to tax the bill of costs in accordance with the

law.

The chamber summons is supported by an affidavit affirmed by Ms. Jasbir Mankoo, learned advocate for the applicants. The application is made under Order 7(1) of the Advocates Remuneration Order, 2015. On the other hand, the application is contested through a counter affidavit affirmed by Mr. Nilesh Suchak, Director of the respondent. Whereas Mr. William Mang'ena learned advocate represented the applicants, Mr. Raphael Rwezahaula learned advocate represented the respondent. Hearing of the application proceeded by way of filing written submissions.

Fortunately, there were no lengthy arguments presented by the learned advocates for the parties. In terms of paragraph 9 of the applicant's affidavit, the Taxing Officer's decision is unfair, unreasonable and irregular for the following grounds: -

- (a) That, the decision of the Taxing Master (sic) was based on an error *of* principle.
- (b) That, the Taxing Master (sic) awarded TZS 1, 334, 189, 800 as instruction fees which is exorbitant, excessively high and not commensurate to the work done by the Respondent's counsel in prosecuting the suit and defending the counter claim.
- (c) That, the fees awarded to the respondent were manifestly excessive and

justifies an interference by this court.

- (d) That, if the decision of the Taxing Officer is not set aside, it will set a dangerous precedent and have the effect of conferring access to courts only to the wealthy.
- (e) That, the decision of the Taxing Master (sic) is based on extraneous matters which were not addressed by the parties during the hearing of the taxation cause.
- (f) That, the Taxing Master (sic) wrongly invoked 3% as a scale for determining the amount of instruction fees to be awarded in this case.
- (g) That, in deciding the matter the Taxing Master(sic) failed to exercise her discretion properly, hence arriving at a wrong conclusion.
- (h) That, in allowing the respondent's Bill of Costs the Taxing Master (sic) misdirected herself in assessing and relying on the factor of complexity without specifying the elements of the case that were complex. Not even a single complex issue was mentioned.
- (i) That, the fees awarded to the Respondent is so high that it constitutes unjust enrichment of the Respondent. The fees were not reasonable compensation for the work done by the Respondent's counsel.

In the written submissions by the learned advocate for the applicants, it was submitted that, the Taxing Officer considered extraneous matters. That, whereas the respondent did not submit to substantiate the amount taxed in

the application for bill of costs, the Taxing Officer proceeded to award exorbitant fees.

According to the learned advocate, the applicants did not challenge instruction fees in respect of the counter claim, for failure of the learned advocate for the respondent to submit on the same in his submissions in chief during prosecution of the Bill of Costs. The learned advocate submitted that, whereas the counter claims were filed on 24th November 2020, instruction fees for defending the same was combined with that of prosecuting the suit that appears to have been charged on 1st October 2020, more than three weeks before the filing of the counter claims.

The applicants further condemned the Taxing Officer for failure to consider relevant factors in awarding the instruction fees. The learned advocate for the applicants submitted that, while it is true that Scales provided under the Advocates Remuneration Order should be followed, the other relevant factors ought to be considered. The learned advocate named the other factors to be the suit amount, complexity, public policy, time spent, number of witnesses, documents tendered and nature of dispute. In his considered view, the suit was a simple one, based on mortgage, the respondent having examined only one witness and both parties having relied on same documents.

The learned advocate for the respondent submitted in reply that, instruction

fees of USD 1,000,000/= was claimed in the Bill of Costs in respect of prosecuting Commercial Case No. 105 of 2020 and defending the two counter claims raised by the applicants. According to the learned advocate, placing instruction fees under a date when the counter claims had not been filed did not in any way change the position that the same advocate had prosecuted the suit and defended against the counter claims after they had been filed. The learned advocate for the respondent maintained that, by charging 3% of the claimed suit in the counter claims, the Taxing officer did nothing than applying the scale of costs statutorily provided for contentious matters above TZS 400,000,000/=. Reference was made to item 8 of the 9th Schedule of the Advocates Remuneration Order, 2015, GN No. 363 of 2015 which provides that, fees for contentious proceedings when a subject matter in dispute is over Tanzania Shillings Four Hundred Millions is three percent (3%) of the value of the subject matter in dispute.

The only issue for determination is **whether there is sufficient cause for interfering with the Taxing Officer's decision dated 4th August 2022**. My starting point is the principle 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 with, and the court will intervene only in exceptional cases. **See: ARTHUR VS NYERI ELECTRICITY UNDERTAKING (1961) E.A**

492. That is to say, it is now settled that, the court will not interfere with the decision of a Taxing Officer except in cases where the applicant demonstrates that there was an error in principle, or the quantum is manifestly excessive or too low that it amounts to injustice.

In this application, the applicants are faulting the Taxing Officer for a reason that, the respondent did not substantiate during hearing of the Bill of Costs, the way he spent the claimed and allowed sum, particularly, the instruction fees. This cannot be a ground for faulting the Taxing Officer in Taxation matters whereby a Taxing Officer is authorized to proceed with taxation even where both parties to a Bill of Costs are absent. **See:** Paragraph 68 of the Advocates Remuneration Order, 2015.

There was no allegation on part of the applicants that, the value of the subject matter in the counter claims, which the Taxing Officer applied in computing the instruction fees, was a wrong one. It is trite law that the value of the subject matter of a suit for the purpose of taxation of a bill of costs, amongst other sources, can be determined from the pleadings. That is what the Taxing officer did in this case. Only when the value of the subject matter is not ascertainable is when discretion of the Taxing Officer is to be invoked.

Paragraph 12(1) of the Advocates Remuneration Order provides that, the Taxing Officer may allow such costs, charges and expenses as authorized in

the Order or appear to him to be necessary or proper for attainment of justice. From the quoted paragraph it appears that, where the Scale provides for costs, charges and expenses to be allowed, that is what the Taxing Officer may allow. In terms of the decision in **NANYUKI ESSO SERVICE VS TOURING AND SPORTS CARS LTD (1972) E.A, 500**, it would appear that, what the Scale provides is the minimum allowable. It was decided in the said case that, the Taxing Officer may give more when he is satisfied in his discretion, that, there is good reason to do so for example when a case is of more than normal difficulty or complexity or involves exceptional responsibility. In this case, the Taxing Officer appears to have allowed what the Scale provides under Item 8 of the 9th Schedule to the Advocates Remuneration Order. That she ended up allowing TZS 1, 334,189,800 which the applicants consider to be exorbitant, is no good cause for faulting her decision in the absence of proof of any taxation principle that was breached by the Taxing Officer.

For the foregoing reasons, the application is dismissed for being unmeritorious. I make no order as to costs.

DATED at DAR ES SALAAM this 30th day of NOVEMBER 2022.


C.P MKEHA

JUDGE

30/11/2022

Delivered this 30th day of November, 2022 in the presence of Advocate
Tumaini Michael for the Applicant and Frank Mwalongo for the Respondent.



J. M. MINDE
DEPUTY REGISTRAR
30/11/2022