

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL REFERENCE NO. 07 OF 2022**

(Arising from Taxation Cause No.110 of 2018)

**YARA TANZANIA LIMITED ..... APPLICAN**

**VERSUS**

**D.B SHAPRIYA & CO. LIMITED ..... RESPONDENT**

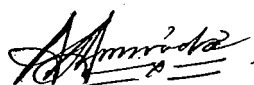
**RULING**

**A.A. MBAGWA, J.**

This ruling is in respect of reference against the decision of the taxing officer in Taxation Cause No. 110 of 2018 delivered on 7<sup>th</sup> day of June, 2022.

The background leading to the present reference may, in a nutshell, be recounted as follows;

The respondent, D.B Shapriya & Co. Limited instituted a suit against the applicant, Yara Tanzania Limited via Commercial Case No. 37 of 2016. The case ended in favour of the respondent, D.B Shapriya & Co. Limited by way of default judgment that was delivered on 30<sup>th</sup> August, 2018 following the applicant's failure to file written statement of defence. The court, among other reliefs, awarded the respondent costs of the suit. Subsequently, the



respondent D.B Shapriya & Co. Limited filed Taxation Cause No. 110 of 2018 to claim her costs that she incurred in prosecution of Commercial Case No. 37 of 2018.

After hearing the parties, the taxing officer Hon. J. M. Minde, on 7<sup>th</sup> June, 2022, delivered a ruling in which she taxed bill of costs as follows;

1. Instruction fee at US& 79, 664
2. Filing fee at Tshs10,230,000/=
3. Transport costs at 200,000/=

The decision by the taxing officer did not amuse the applicant hence she filed this reference by way of chamber summons made under order 7(1) and (2) of the Advocates Remuneration Order, 2015 hereinafter to be referred to as the Order and section 95 of the Civil Procedure Code. The chamber summons is supported by affidavit sworn by Nuhu Mkumbukwa, learned counsel for the applicant. At paragraph 9 of the affidavit, the deponent states that the discretion of the taxing officer in Taxation Cause No. 110 of 2018 was not exercised judiciously in that the taxing officer did not adhere to the prescribed scales and other established principles guiding taxation thereby occasioning injustice to the applicant herein.

The deponent continued that the taxing officer taxed the bill of costs without taking into account the fact that the suit i.e., Commercial Case No. 37 of 2016 was never heard on merits.

In rebuttal, the respondent filed a counter affidavit sworn by Roman S.L. Masumbuko, learned advocate for the respondent to contest this reference.



He stated that the whole reference was baseless as the taxing officer exercised her discretion judiciously and there were no principles violated.

When the matter came up for hearing, Mr. Ally Hamza and Erick Dengha, learned advocates represented the applicant whereas Mr. Nobert Tarimo, learned counsel, appeared for the respondent.

The applicant's counsel, at the outset, prayed and was allowed adopt the affidavit in support of the reference to form part of the submission. He argued that the applicant's main complaint was on the taxed instruction fee. According to him, the taxed amount to wit; US\$ 79,664 was manifestly high in that Commercial Case No. 37 of 2018 did not go to full trial. To bolster his argument, the counsel referred this court to the case of **Tanzania Rent a Car limited vs Peter Kimuhu**, Civil Reference No. 9 of 2020, CAT at Dar es Salaam, which he contended that it provided the criteria for taxation of matters falling under ninth schedule of the Order. The applicant's counsel also relied on the case of **NBC vs MM Worldwide Trading Co. Ltd and two others**, Misc. Commercial Cause No. 217 of 2015, HC, Commercial Division at page 10. The applicant's counsel submitted that in **NBC vs MM Worldwide Trading Co. Ltd and two others** (supra), this court held that the taxing officer may award costs even below the set scales basing on the circumstances of the suit. Further, the counsel continued to fault the taxing officer stating that the calculation was based on wrong premises as the same ought to base on the amount granted under item 3 of the decree to wit, US\$ 1,967,173.7 whose three percent is US\$ 59015.20. He continually argued that Order 48 of the Advocates Remuneration Order, 2015 provides that where 1/6 of the total



amount exclusive of court fee is disallowed, the party presenting bill of costs shall not be entitled to such cost. On the basis of his submission, applicant's counsel beseeched the court to allow the reference with costs.

In reply, like his counterpart, Mr. Nobert Tarimo commenced his submission by adopting the counter affidavit to form part of his submission. He then proceeded to oppose the reference stating that the taxing officer did not violate any principle guiding taxation nor was the taxed fee against the prescribed scale. Mr. Tarimo said that the factors which the taxing officer took into account were discussed at page 4 of the impugned ruling. The respondent's counsel expounded that the subject matter of the suit was not US\$ 1,967,173.7 as contended by the applicant's counsel rather it was US\$ 3,983,214 whose 3% is 119, 496.00 hence its two third (2/3) is US\$ 79,664 as rightly found by the taxing officer. While citing the case of **Ecobank Tanzania Limited Vs Double Company Limited and Three Other**, HC, Commercial Division at Dar es Salaam, the counsel told the court that the judge should only interfere the bill of costs taxed where the amount awarded is either manifestly low or high. The respondent's counsel therefore prayed this court to be guided by its decision in **Ecobank Tanzania Limited** (supra). With regard to the case of **NBC vs MM Worldwide** (supra), the respondent's counsel submitted that it is distinguishable from the circumstances of the matter at hand.

Further, the respondent counsel cited the case of **Ujagar Singh vs Mbeya Cooperative Union** HCD 1968 and told the court that it was held that instruction fee is for the work done in preparing the case before trial



as such it is irrelevant whether the trial would be long or tedious. Finally, he prayed the court to dismiss the reference with costs.

In rejoinder, the counsel briefly reiterated that the bill of costs in contest contravenes order 48 of the Advocates Remuneration Order, 2015.

Having strenuously canvassed the depositions filed by the parties along with the rival arguments, I have learnt that the bone of contention is only on the instruction fee taxed.

I took time to read the ruling in Commercial Case No. 37 of 2016 and its attendant decree from which Taxation Cause No. 110 of 2018 emanated. According to the decree, the court ordered as follows;

1. The defendant shall refund the plaintiff USD 540,000.00 which was unlawfully demanded and unlawfully received by the defendant in advance payment guarantee No. 01/GTEE/0127/13 issued by M/s Barclays Bank (T) Ltd.
2. The defendant shall refund the plaintiff USD 1,566,041.00 unlawfully demanded and unlawfully received by the defendant in advance payment guarantee No. HK DAV 70208378001 issued by M/s Commercial Bank of Humburg Germany.
3. The defendant shall pay to the plaintiff USD 1, 967,173.74 being the balance of the contract price which was yet paid to the plaintiff
4. The defendant shall pay the interest rate of 3% per annum from the date of filing the suit to the date of judgment and further interest of 1% per annum from the date of judgment to the date of full payment of the decretal sum.



5. The plaintiff is awarded costs of the suit.

From the above decree it goes without saying that the total sum claimed and granted by the court is US\$ 3,983,214. In Taxation Cause No. 110 of 2018, the applicant claimed US\$ 119,496 being 3% of the principal sum of US\$ 3,983,214 as per the item 8 of the Ninth Schedule to the Advocates Remuneration Order, 2015 as the claimed amount was above 400 million.

In the end, the taxing officer proceeded to tax the instruction fee based on the provisions of item 8 of the Ninth Schedule. At page 6 of the ruling, the taxing officer taxed US\$ 79, 664 being 2/3 of the 3% of the total sum of US\$ 3, 983,214.

It is a trite law that this court is not entitled to interfere with the discretion of the taxing officer in the award of instruction fee except where it is established that the taxing officer exercised his discretion injudiciously, acted upon a wrong principle or applied wrong consideration. See **Tanzania Rent a Car Limited vs Peter Kimuhu**, Civil Reference No. 9 of 2020, CAT at Dar es Salaam and **Attorney General vs Amos Shavu**, Taxation Reference No. 2 of 2000.

The provisions of item 8 of the Ninth Schedule are to the effect that where the claim is above four hundred million, the instruction fee should be 3%. The provision further stipulates that where the defence is not filed, the instruction fee should be two third (2/3) of 3%.

It is common cause that the total claim which was sought and finally granted by the court in Commercial Case No. 37 of 2016 is US\$ 3,983,214. As such, applying the above provisions, it necessarily follows that two third

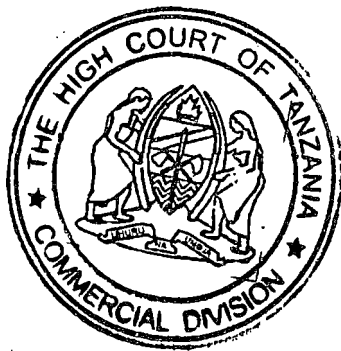


of 3% of the total decretal amount is US\$ 79, 664 as rightly taxed by the taxing officer. In view of the above, I do see the reason let alone good one to interfere with the discretion of the taxing officer as there was no wrong application of principle nor was the amount taxed manifestly high.

In the event, I find this reference without merits and consequently dismiss it. In order to bring this dispute to an end, I order no costs.

It is so ordered

Dated at Dar es Salaam this 27<sup>th</sup> day of December, 2022.



  
**A.A. Mbagwa**

**JUDGE**

**27/12/2022**