

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

**AT DAR ES SALAAM**

**REFERENCE NUMBER 5 OF 2022**

(Arising from Taxation cause Number 90 of 2021)

**WELL WORTH HOTELS AND LODGES LIMITED.....APPLICANT**

**VERSUS**

**EAST AFRICA CANVAS COMPANY LIMITED.....1<sup>ST</sup> RESPONDENT**

**STILING ARVING HORSELY .....2<sup>ND</sup> RESPONDENT**

**ROBERT JAMES FLOWERS.....3<sup>RD</sup> RESPONDENT**

**GARY MCINTYRE.....4<sup>TH</sup> RESPONDENT**

**ECO-STEEL AFRICA LIMITED.....5<sup>TH</sup> RESPONDENT**

Date of Last Order: 14/12/2022

Date of Ruling: 30/01/2023

**RULING**

**MKEHA, J.**

The applicant is moving the court by way of a reference to be pleased to reverse and set aside the decision of the Taxing Master issued on 29<sup>th</sup> April, 2022 in Taxation Cause No. 90 of 2021. The applicant is also asking the court to proceed taxing the bill of Costs in accordance with the law. The application is made under Rule 7 (1) and (2) of the Advocates

Remuneration Order, 2015. The application is supported by affidavit affirmed by Mr. Zulfikar Ismail, Principal Officer of the applicant. The application is contested through a counter affidavit sworn by Mr. Heriel Munisi, the respondents' counsel.

Through paragraph 6 of the applicant's affidavit and in accordance with submissions made in court by Mr. Idrisa Juma learned advocate for the applicant, the learned Taxing Master invoked a wrong scale in awarding TZS 20,000,000/= as instruction fees. According to the learned advocate the Taxing Master was wrong in treating the claim in Commercial Case No. 107 of 2020 as a liquidated one which in fact, was not in the nature of a liquidated sum. The learned advocate condemned the Taxing Master for failing to consider the fact that Commercial Case No. 107 of 2020 was struck out without being heard. The learned advocate further submitted that, following disallowance of more than 1/6 of the bill, the whole bill of costs ought to be disallowed.

Mr. Munisi learned advocate for the respondents submitted in reply that, proper scale had been applied by the Taxing Mater in Taxing the Bill of

Costs. In view of the learned advocate, the Taxing Officer had properly exercised her discretion.

It is true that, the Taxing Officer treated the claim in Commercial Case No. 107 of 2020 as a liquidated sum. At page 9 of the Taxing Officer's ruling, she reasoned as follows: "From the foregoing analysis, I have no doubt the law provides for a claim above Tshs. 400,000,000/=, the fee payable is 3% however it should be noted that this percentage has been set as a guide, one can charge less amount or more depending with circumstances of the case but what matters is, if the said amount charged is fair and reasonable..... I have gone through the records it is undisputable fact that the matter was neither time consuming, taking into account that the matter had not been finalized by hearing it ended after the counsel for the plaintiff has (sic) conceded with the Preliminary Objection raised, it will (sic) be illogical to tax instruction fee of 3% for a matter which ended in (sic) preliminaries the same as the matter which ended in (sic) full trial, as such and being guided by the authorities cited I find Tshs. 20,000,000/- will meet the justice of this item as instruction fee, which I accordingly taxed (sic) so,....."

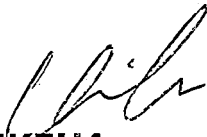
From the foregoing reasoning it can be seen that, although the Taxing Officer declined allowing 3% of the claimed sum as instruction fees, whatever she ended up allowing was influenced by her finding that the claimed sum was a liquidated one falling under the 9<sup>th</sup> Schedule to the Advocates Remuneration Order. Was that a correct finding? According to Black's Law Dictionary, 9<sup>th</sup> Edition by Bryan A Garner, a liquidated amount is a figure readily computed based on an agreement's terms. From the foregoing definition, a liquidated claim results from the parties' agreement or else, it should be that which can be precisely determined by operation of law. I took time to go through the plaint in Commercial Case No. 107 of 2020, particularly the facts constituting the cause of action and the claimed reliefs. Nothing from the said plaint suggests that the claim was a liquidated one. Therefore, much as the Taxing Officer had correctly reasoned through the use of proper taxation principles, by treating the claim as a liquidated one while it was actually not, she ended up with unjust decision. The amount at which the instruction fees were taxed, forms more than 88% of the figure at which the bill was taxed.

For the foregoing reasoning the Taxation Officer's ruling and findings are set aside. I direct that Taxation Cause No. 90 of 2021 be placed before

another Taxing Officer of competent jurisdiction for fresh taxation. No order is given as to costs.


Dated at Dar es Salaam this 30<sup>th</sup> day of January, 2023.



  
**C.P. MKEHA**  
**JUDGE**  
**30/01/2023**

**Court:** Ruling is delivered in the presence of the parties' advocates.



  
**C.P. MKEHA**  
**JUDGE**  
**30/01/2023**