

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

AT DAR ES SALAAM

COMMERCIAL REFERENCE NO. 12 OF 2022

(Arising From Taxation Cause No. 51 of 2022)

BAHDELA CO. LIMITED.....APPLICANT

VERSUS

PETROFUEL (T) LIMITED.....RESPONDENT

Date of last order: 17/02/2023

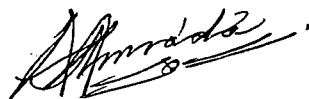
Date of ruling: 23/03/2023

RULING

A.A. MBAGWA, J.

This is a reference against the decision of the taxing officer in the Taxation Cause No. 51 of 2022.

The facts leading to the present matter may be briefly narrated as follows;
The respondent, Petrofuel (T) Limited filed a petition for winding up the applicant company, Bahdela Co. Limited via Misc. Commercial Cause No. 42 of 2021. However, the said petition could not be heard on merits as it was disposed of on preliminary objection which was raised by the applicant,

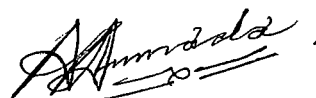


Bahdela Co. Limited. Consequently, the said petition was dismissed with costs.

Following the dismissal order, the applicant who was the respondent in the petition, filed Taxation Cause No. 51 of 2022 claiming a total amount of Tsh. 201, 590, 000/= comprising the sum of Tsh. 200,000,000/= as an instruction fee.

In her ruling dated 2/08/2022, the taxing officer allowed a sum of Tsh. 2,500,000/= pursuant to item 1(a) of the Eleventh Schedule to the Advocates Remuneration Order instead of Tsh. 200,000,000/= which had been claimed by the applicant. The taxing officer also taxed attendance costs at Tsh. 50,000/= which made a total of Tsh. 250,000/= and disbursement at Tshs 190,000/=. In sum, the taxing officer taxed the bill of costs at Tsh. 2,940,000/= from Tsh. 201, 590, 000/= which was raised by the applicant. Nonetheless, the taxing officer invoked the provision of Order 48 of the Advocates Remuneration Order and taxed off the whole bill of costs.

Aggrieved, the applicant has, by way of chamber summons made under order 7(1) and (2) of the Advocates Remuneration Order GN. No.264 of 2015, brought this reference to assail the decision of the taxing officer. In the chamber summons, the applicant prays for the following reliefs;

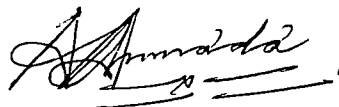


- i) That this Hon. Court be pleased to determine this reference in respect of the correctness, legality and validity of the decision of the taxing master dated 28th March, 2021 in Taxation Cause No.51 of 2022 arising from Misc. Commercial Cause No. 42 of 2021 with a view to satisfying itself on the proper exercise of discretion.
- ii) That costs of this application be provided for.
- iii) Any other order as the Hon. Court shall deem fit to grant.

In the supporting affidavit sworn by Samson Edward Mbamba, the applicant's learned counsel, it is contended that the taxing officer improperly exercised her discretion because she did not take into consideration the enunciated principles.

In contrast, the reference was opposed by the respondent via a counter affidavit sworn by Stanslaus Ishengoma, the respondent's learned advocate. Therein, he contended that the taxing officer properly exercised her discretion. He also stated that the legal position relied on by the applicant was overtaken by the enactment of the Advocates Remuneration Order, 2015 which, among other things, brought in the provision of Order 48.

When this matter was called on for hearing, parties prayed for and were allowed to argue the reference by way of written submissions.



Submitting in support of the reference, the applicant's learned counsel faulted the taxing officer for taxing off the whole bill of costs presented by the decree holder on the reason that the decree holder over charged the bill of costs. The counsel referred this court to order 48 of the Advocates Remuneration Order which states that;

"...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..."

The applicant's counsel, while referring to paragraph 4 of the applicant's affidavit, told this court that the decision of the taxing officer was an improper exercise of her discretion. He said that the law does not give the taxing master powers to tax off the bill for the suit but enjoins him to tax off the costs of taxation. He elaborated that what can be taxed off are costs of taxation proceedings and not costs incurred in the main suit. He continued that what is meant under the provision of order 48 above is that in a deserving case, where one-sixth of the total amount of the filed bill of costs is disallowed in the process of taxation, no costs for such taxation should be allowed. The applicant's counsel expounded that the rationale behind the



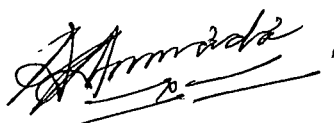
principle is that if more than 1/6 of the total amount of the bill of costs presented for taxation is disallowed then there is no need to issue costs for the taxation proceedings. According to the applicant's counsel, the provisions of order 48 do not concern the costs of the suit for which the bill is presented.

Mr. Mbamba 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 where the Court of Appeal held at page 9 thus;

"As argued for the both counsel for the parties for, it is a general rule that the award of instruction fees is peculiarly within the discretion of a taxing officer and the court will always be reluctant to interfere with his decision, unless it is proved, that the taxing officer exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong consideration".

The applicant also referred this court to the case of **Ramani Consultants Ltd vs the Board of Trustees of the National Social Security Fund & Another**, Civil Application No. 184 of 2014, CAT at Dar es Salaam, where the Court of Appeal observed at page 4;

"On the issue of costs, we would at first state that the costs are awarded at the discretion of the court subject to the general rule and practice that costs should normally follow the events unless the court orders otherwise for a good cause."



The applicant's counsel concluded that since the applicant won the case and she had incurred costs in prosecuting the case, it was wrong for the taxing officer to tax off the wholly bill of costs. He opined that the taxing officer ought to have exercised the discretion by taxing the amount which in her wisdom was reasonable. He thus implored the court to allow the reference, quash and set aside the decision of the taxing officer. He also prayed for costs.

In reply, after adopting the counter affidavit, the respondent's counsel submitted that all chargeable legal fees for either to prosecute and or defend the matters should be within the scales provided under the Advocates Remuneration Order as it is stipulated under order 46. He continued that whatever goes beyond the provided scale should be sanctioned by a judge. He lamented that in the present matter there is no such order of the judge. He thus strongly submitted that by dismissing the entire bill of costs, the taxing officer was justifiable and at any rate she cannot be faulted.

In rejoinder, the applicant reiterated his earlier submission. He insisted that the taxing officer failed to use her discretionary powers by taxing off the entire bill of costs contrary to order 48 of the Advocates Remuneration Order.

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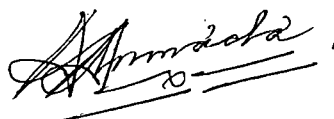
It is a trite law that this court is not entitled to interfere with the discretion of the taxing officer in the award of instruction fee except where it is established that the taxing officer exercised his discretion injudiciously, acted upon a wrong principle or applied wrong consideration. See **Tanzania 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.

I have carefully gone through the rival submissions, parties' depositions and their attending annexures in particular the ruling in Taxation Cause No. 51 of 2022. At page 8 of the ruling the taxing officer held;

'The amount presented in this bill of costs at hand is Tshs. 201, 400,000/= while the hall (sic) bill of costs assessed to the tune of Tshs. 2, 940,000/=. In those circumstances one must not dispute that Order 48 of the Advocate Remuneration Order, 2015 is inevitable and unavoidable in this bill of costs. Hence the conclusion I have is not any other than taxed off the hall (sic) bill of costs and I do. It is so ordered'

Order 48 of the Advocates Remuneration Order on which the taxing officer banked to tax off the whole amount provides thus;

"...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:

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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..."

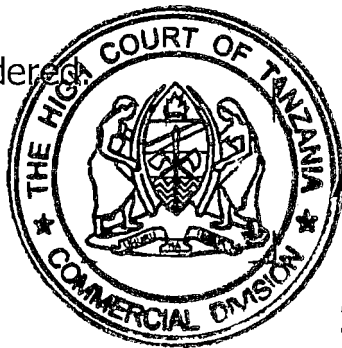
The above provision is louder and clear that where one-sixth of the bill of costs is disallowed, then the party presenting the bill is not entitled to any costs. The applicant does not dispute that more than one-sixth of claims was taxed off. What the applicant contests is that the taxing officer ought to invoke her discretion under the proviso to exclude the instruction fee from the computation of the amount claimed (taxed off). He also complains that what is to be taxed off is the costs in respect of taxation proceedings and not costs with regard to the main suit. It is noteworthy that, by virtue of the proviso to order 48, it lies in the discretion of the taxing officer to exclude the instruction fee in the computation of one-sixth. In this case, the taxing officer did not see it fit to exclude the instruction fee as such, she arrived at the decision of taxing off the whole bill of costs. Further, on reading the whole provision, I do not agree with the construction provided by applicant's counsel that the costs to be taxed off relate to the taxation proceedings. In my considered opinion, the phrase "costs of such taxation" refers to the costs claimed in the bill of costs.

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Having dispassionately considered the circumstances in this case, I do not see the reason to fault the taxing officer. As such, I am at one with the respondent's counsel that, the taxing officer properly exercised her discretion and no principle of law was violated.

That said and done, I find this reference without merits and consequently I dismiss it. I order no costs so as to bring the matter to an end.

It is so ordered



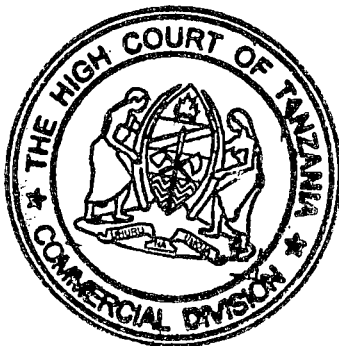
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A.A. Mbagwa

JUDGE

23/03/2023

Court: The ruling has been delivered in the presence of Hilda Mavoa, learned counsel for the respondent who was also holding brief of Samson Mbamba, learned counsel for the applicant this 23rd day of March, 2023.



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A.A. Mbagwa

JUDGE

23/03/2023