

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT ARUSHA

COMMERCIAL REFERENCE NO. 1 OF 2023

(Originating from Commercial Case No. 9 of 2019 and Taxation Cause No. 2 of 2021)

M.A. KHARAFI & SONS TANZANIA LIMITED.....APPLICANT

Versus

SECULARMS TANZANIA LIMITEDRESPONDANT

Date of last order:14/06/2023

Date of Ruling: 14/06/2023

RULING

MKEHA, J.

The Applicant is moving the court by way of Reference for an order having effect of varying the decision of the Taxing Officer dated 31st March, 2023 in Taxation Cause Number 2 of 2021. The application is made under Order 7 (1) of the Advocates Remuneration Order. The chamber summons is supported with an affidavit sworn by Ms. Winnie Evarest Muruve, the Applicant's advocate.

When the learned advocate for the Applicant was invited to argue the application, she adopted contents of the affidavit supporting the application as part of her submissions. The submissions of the learned advocate in court indicate that, the Taxing Officer erred in awarding transport costs distinctly. According to the learned advocate, instruction fees ought to cover transport costs as well.

Mr. Sambo, learned advocate for the Respondent submitted in reply that, transport charges are not inclusive in the instruction fees. The learned advocate submitted further that, whereas the Plaintiff's case was heard in Arusha, the defence case was concluded in Dar es Salaam hence the learned advocates had to buy air tickets to attend hearing of the defence case. The learned advocate insisted that, the transport costs charged by the Taxing Officer being TZS 958,852/= was reasonably fair in the circumstances of the case.

The issue is whether **the Taxing Officer breached any Taxation principle calling for this Court's intervention.** The decision in **GEORGE MBUGUZI AND ANOTHER Vs A.S. MASKINI (1980) TLR 53,**

is in agreement with the submissions made by the learned advocate for the Applicant that, transport costs are inclusive in the instruction fees. In the said case, the court held that "Fees for instructions are intended to cover, not merely the attendance of a solicitor when he takes his client's instructions, but all his work, other than that which is elsewhere specially provided for in looking up the law and preparing the case for trial".

However, the learned advocate for the Applicant did not dispute the fact that the parties had to travel to Dar es Salaam to attend hearing of the defence case which no doubt was never contemplated by the learned advocate for the parties when they asked for instructions fees in respect of Commercial Case No. 9 of 2019 that had been filed at Arusha Registry. It is my holding therefore that, the Taxing Officer acted reasonably in awarding the transport costs to the tune of TZS. 958,852/=. I see no reason for this court's intervention.

For the foregoing reasoning, the application is dismissed for being unmeritorious.

DATED at ARUSHA this 14th day of JUNE, 2023.


C. P. MKEHA

JUDGE

14/06/2023

Court: Ruling is delivered in the presence of Ms. Winnie Evarest learned advocate for the applicant.




C. P. MKEHA

JUDGE

14/06/2023