

**IN HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM**

TAXATION REFERENCE. NO. 14 OF 2023

(Originating from Taxation Cause No.20 of 2023)

BANK OF AFRICA TANZANIA LIMITED..... APPLICANT

VERSUS

JERRY EDWARD NGEWE (as Administrator
of the Estate of the late PUMPHLEY HALMA.....1ST RESPONDENT
AGNESS FELICIA NJABILI.....2ND RESPONDENT
MUKOLA-KAA EDDIE JACOB NKURLU.....3RD RESPONDENT

Last Order: 21/09/2023.

Date of Ruling: 27/10/2023.

RULING

NANGELA, J.:

This ruling follows a reference application brought by the Applicant against the Respondents challenging a decision of the Taxing Officer in Taxation Cause No.20 of 2023.

The Applicant herein has referred the matter to the court under Order 7 (1) and (2) of the Advocate Remuneration Order G.N No.264 by way of a chamber summons supported by an affidavit of one Happyness Caroli Tarimo, her Advocate who is duly authorized by the Applicant.

In the chamber summons, the Applicant seeks the following orders:

1. That, this honourable court be pleased to determine this reference, and quash the ruling and findings of taxing Officer (Hon. Minde, DRCC) in Taxation Cause No.20 of 2023 delivered on the 19th of July 2023.
2. Costs of this application be provided for; and
3. Any other relief this court deems just and fit to grant.

On the 21st of September 2023, the parties appeared before this court for purposes of an oral hearing of this reference application. On the material date, the Applicant enjoyed the services of Mr. Kephaz Mayenje, Learned Advocate while Mr. Mngumi Samadani, Learned Advocate, appeared for the Respondent. Submitting in support of the application, Mr. Mayenje adopted the contents of the affidavit and urged this court to grant the prayers in the chamber summons.

Mr. Mayenje contended that, the basis of this application is the fact that the Taxing Officer decision to

award TZS 10,000,000/= as instruction fees was erroneous as it was premised on a wrong principle.

According to Mr. Mayenje, although the Taxing Officer had agreed with the Applicant's counsel that the proper scale for instruction fees in respect of the Respondent's counter claim falls under item 1 (k) of the 11th Schedule to the Advocates Remuneration Order, G.N. 264 OF 2015, (as seen on page 5 of her decision), the Taxing Officer proceeded to award TZS 10million as the instruction fees based on the time the matter had taken in court and the fact that it was a contentious one.

He submitted, however, that the time which the matter took while in court was not the determining factor as it was not the Applicant's faulty but was due to the demise of one of the parties (Defendants in the suit) in the year 2019. He contended that the matter before the court was by then concluded swiftly within a week from its commencement. He contended, therefore, that it was erroneous not to have applied the applicable scale provided for under item 1(k) of the 11th Schedule to the G.N 264 of 2015.

Relying on the case of **Edmund Ngeni vs. Mjanja Nagagwa**, Taxation Refence No.01 of 2021 (Manyanda, J.,)

Mr. Myenje submitted that, bills of cost in taxation matters should be taxed based on the cost scales provided for under the Advocates' Remuneration Order, G.N 264 of 2015. He contended, therefore, that the Taxing Officer's decision was based on inappropriate principle and should be quashed since the correct amount for instruction fees should have been TZS 1000,000/= and not TZS 10,000,000/=.

Mr. Samadani opposed the granting of this reference application. Adopting the contents of the counter affidavit filed in opposition to the reference application, Mr. Samadani submitted that, the submissions made by Mr. Mayenje are based on a misconception of the ruling made by the Taxing Officer. He contended that, for his part, the Taxing Officer, was right in her decision given that, the claims before the court in the tune of TZS 50Million. As such, he contended, an award of TZS 10million was appropriate.

He told this court that, in essence, the Taxing Master was not just mandated to follow the Remuneration Order, G.N. 264 of 2015 but she also had to be guided by other factors and that, she did exactly that by looking at the nature of the case which she found to be contentious one and involved more than four witnesses.

Relying on the case of **National Bank of Commerce Limited vs. MM Worldwide Trading Co. Ltd and 20thers**, Misc. Commercial Cause No.217 of 2014 (unreported), Mr. Samadani contended that, the assessment by the Taxing Officer as to what should be awarded as instruction fees was justified in the circumstances as the amount was in respect of three respondents and not just one. He therefore urged this court to dismiss the application with costs.

In his rejoinder submission, Mr. Mayenje was of the view that, it seems that the learned counsel for the Respondents is conceding that the instruction fees ought to have been determined as per the scales provided for by the G.N.264 OF 2015. He contended that the Bill of costs arose from a counterclaim which was heard within a week's time and the delayed time was a matter beyond the control of the parties as some of the parties to the suit passed on. He rejoined, therefore, that, to assess the fees based on the time factor was erroneous as the scales ought to have been followed. He thereby reiterated his submission in chief.

I have considered the rival submissions made by the two counsels and duly looked at the affidavits relied upon.

The issue for determination is whether the Taxing Officer was erroneous in her decision to tax the instruction fees at TZS 10,000,000 instead of adhering to the scales as provided for under item 1(k) of the 11th Schedule to the G.N. 264 of 2015.

From the already decided cases which have set out the basic principles governing taxation of bills of costs, the law is settled that, rarely will courts interfere with the decision of the Taxing Officer. The position was stated in several cases one of them being the case of **Haji Athumani Issa vs. Rweitama Mutatu** [1992] TLR 372 where the court stated as here below, that:

“The law about Taxation is this:
That, Judges will in most cases not interfere with the questions of quantum, because these are regarded as matters with which the Taxing Officer is particularly fitted to deal with. But and that is a big “BUT” the court could interfere if the Taxing Officer clearly acted unjudicially.”

In the case of **Premchand Raichand Ltd vs. Quarry Services of Eat Africa Ltd and Others**, [1972] 1 EA 162,

which were referred with approval by the Court of Appeal in the case of **Tanzania Rent a Car Ltd vs. Peter Kimuhu**, Civil Ref.No.9 of 2020; (CAT) (unreported), the court was of the view that, when determining the quantum of instruction fees the following principles need to be considered:

“First, that costs be not allowed to rise to such a level as to confine access to the courts to the wealthy; *second,* that a successful litigant ought to be fairly reimbursed for the costs she had to incur; *thirdly,* that, the general level of remuneration of advocates must be such as to attract recruits to the profession; and *fourthly,* that so far as practicable there should be consistency in the awards made, both to do justice between one person and another and so that a person contemplating litigation can be advised by his advocates very

approximately what, for the kind of case contemplated, is likely to be his potential liability for costs.”

In the case **National Bank of Commerce Ltd vs. MM Worldwide & 2 Others** (supra) this Court did make a finding that costs are taxable on the rates provided by the law regardless of the stage at which the suit came to an end. This is similar to what this court stated in the case of **Edmund Mgeni** (supra) that taxation of costs in contentious proceedings is to be governed by the rates prescribed in the schedules to the order.

However, this court does understand that the Taxing Officer has a wide discretionary margin under Order 12 (1) of the Advocates Remuneration Order and that exercise of such discretion cannot easily be interfered with unless it is established that the same was exercised injudiciously. In the case of **National Bank of Commerce** (supra) this court was of the view that, where there is additional or deduction from the scales, any party seeking to have the amount taxed in a manner other than what the scales provide has to lay

grounds upon which the Taxing Officer will base his exercise of discretion.

In this matter before me the Taxing Officer did agree with a submission that the proper scale for the instruction fees was item 1(k) of the G.N. 264 of 2015. However, she did note that, there were other factors to consider which include the time taken in disposing of a matter, the value involved and the nature of the subject matter, the behaviour of the parties in expediting the disposal of the case and the public policy of ensuring affordability of litigation and consistency in quantum of costs allowed.

The above factors were considered in the cases of **National Bank of Commerce Limited vs. MM Worldwide Trading Co. Ltd** (supra), **Attorney General vs. Amos Shavu, Taxation Ref. No.2 of 2000, (unreported)**, and **Eco Bank Tanzania Limited vs. Double Company Limited & 3 Others**, Commercial Ref. No. 2 of 2019 (all unreported).

In her decision, however, the Taxing Officer pointed out the factor of time spent noting that, the matter from which the bill emanated, i.e., the Commercial Case No.117 of

2019 took more than 4 years in court before it was finalised. She also noted that the counterclaim was a contentious matter and three witnesses got involved in proving it with more than 30 exhibits to rely on. In my view, the Taxing Officer laid did examine how complex the matter was and that is why she concluded that an award of TZS 10,000,000 was befitting as instruction fees.

In essence, the complexities involved in one suit will differ from another and every case is heard and determined based on its own merits. From that perspective, when it comes to assessment of instruction fees, it is an agreed principle, therefore, that, instruction fees must be commensurate with the work for which they are to be charged. A tedious or much engaging work in terms of time spent in research, the number of witnesses and documents to go through and the like, will in no doubt attract much.

The above conclusion was the gist of what this court's stated in its holding in the above cited case of **CRDB Bank Plc vs. Starpeco Limited & Another**, Commercial Reference No.14 of 2022 (unreported) wherein the Court considered as well as the preparatory time invested in the case as a factor to consider.

See also other cases such as **Attorney General vs. Amos Shavu**, (supra); **Kapinga and Co. Advocates vs. National Bank of Commerce, Civil Appeal No.8 of 2011, CAT, DSM** (unreported), **East Africa Development Bank vs. Blueline Enterprises Ltd, Civil Ref. No.12 of 2006, CAT, DSM** (unreported) and **C.B. Ndege vs. E.O Aliva and AG [1988] TLR 91**.

From the foregoing, and because the Taxing Officer established the rationale for her exercise of discretion to award more than what the scales prescribed, I do tend to agree with the submission by Mr. Samadani that, the Taxing Officer did not only look at what the scales provided for but she did also take into account other factors which I find appropriate given the circumstances of Commercial Case No. 117 of 2019 which the case from which the Bill of Costs emanated.

That being the case, I find it inappropriate for this court to interfere with the decision of the Taxing Officer which decision I find to be appropriate given the circumstances of the matters as were laid before her for determination. In the upshot of all that, this court confirms

that the decision of the Taxing Officer and settle for the following orders:

1. THAT, this reference application is without merits as the impugned decision of the Taxing Officer is found to be appropriate and based on sound exercise of her discretion.
2. THAT, in view of the above finding, this reference application is hereby dismissed.
3. In the circumstances of the matter, I make no orders as to costs.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 27th DAY OF
OCTOBER 2023**



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DEO JOHN NANGELA
JUDGE