

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

**AT DAR ES SALAAM**

**MISC. COMMERCIAL REFERENCE NO. 23 OF 2022**

**(Arising From Bill of Costs No. 123 OF 2022)**

**MOHAMED ENTERPRISES (TANZANIA) LIMITED..... APPLICANT**

**VERSUS**

**ETG COMMODITIES..... RESPONDENT**

Date of Last Order: 15/12/2022

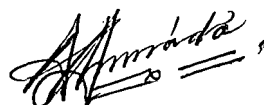
Date of Ruling: 22/02/2023

**RULING**

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

The Applicant herein **MOHAMED ENTERPRISES (TANZANIA) LIMITED** by way of chamber summons brought this application under Rule 7 (1) and (2) of the Advocates Remuneration Order GN No.264 of 2015 and any other enabling provision of the law praying before this honorable court for the following orders: -

- (i) That, the Honorable Judge of the High Court be pleased to reverse the ruling of the taxing master, Hon. M. B. Mpaze, DR



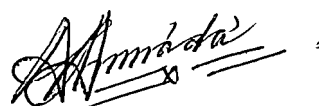
dated 13<sup>th</sup> October ,2022 on reasons and grounds set forth in the supporting affidavit.

- (ii) Costs for this application be provided for.
- (iii) Any other relief this honorable court may deem fit and just to grant.

The application was supported by an affidavit sworn by Neema Roman Mahunga. In contrast, the respondent company contested the application via a counter affidavit sworn by Symphorian Revelian Kitare refuting all the facts in the applicant's affidavit.

The brief facts of the application may be recounted as follows; The applicant was dissatisfied with the decision of the taxing officer in Taxation Cause No.123 of 2022. The said Taxation Cause was heard *ex parte* and ultimately the taxing officer taxed a total sum of TZS of 14, 830,000/= instead of TZS 24,826,746.20 which was claimed by the respondent. The total sum was arrived at after taxing different items as follows; TZS 10,000,000/= as instruction fees, TZS 3,200,000/= for court attendance, TZS 1,260,000/= for transport, TZS 370, 000/= for court fees and TZS. 500,000/= for bill of costs.


Aggrieved by the decision of the taxing officer, the applicant preferred the present reference.



During the hearing of this application, the applicant was represented by Mary Lamwai assisted by Neema Roman Mahunga, learned advocates while respondent had services of Sympholian Kitale assisted by Kelvin Lubago, learned advocates.

After adopting the affidavit, Mary Lamwai told the court that the main grounds of this application were found at paragraph 4 of the affidavit in support of the application. She submitted that items 1 to 64 in the bill of cost were arbitrarily taxed. She expounded that the taxing officer charged court of appearance at flat rate of TZS. 50,000/= even for appearances at the court registry. The applicant counsel argued that item 23(a) of the Eight Schedule provides for TZS. 50,000/= for appearance of 15 minutes as such, charging at TZS. 50,000/= was so high. She concluded that the appropriate and fair charge ought to be TZS. 10,000/= particularly for those attendances in respect of the registry issues.

With respect to items 65 and 66 on the instruction fee, the counsel lamented that the taxing officer erred by charging at TZS 10,000,000/= on the ground that the matter took too long despite the fact that at page 2 of the ruling, the taxing master admitted that the case was not complicated. She further submitted that the taxing master did not indicate the scale under which she charged.

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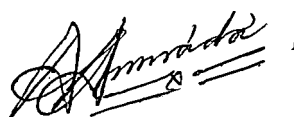
In addition, the applicant's counsel submitted that the taxing officer erred for failure to consider the EFD receipt by holding that indication of 26/07/2021 in the receipt was typographical error.

With regard to transport costs, the applicant's counsel lamented that a flat rate of TZS. 20,000/= was so high given that no receipts were produced. She referred this court to the case **John Eliafye vs. Michael Lesani Kweka**, Taxation Reference No. 12 of 2007, CAT at Dar es Salaam at page 5 wherein proof by receipt was required to back up transport costs.

Finally, the applicant's counsel prayed the court to allow the reference and award the decree holder a reasonable amount.

In reply, the respondent's counsel opposed the reference for being meritless.

The respondent's counsel submitted that TZS 50,000/= which was awarded for court attendance was within the range provided under item No. 3 of the Eighth Schedule to the Advocate Remuneration Order. The counsel submitted that even if the attendance was for ten minutes which is the time normally spent in court, still it was within the scope of item 3 of the Eighth Schedule to the Advocate Remuneration Order. Further, Mr.

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Kitale submitted that the law does not say whether the attendance is meant for court registry or before a judge.

Relating to the instruction fee, the respondent counsel submitted that during hearing of bill of costs, they stated the scale on which they based in charging the instruction fee. The counsel clarified that the amount which they claimed was ranging between 3% to 7% which is provided under the 9<sup>th</sup> schedule but they charged at 6% which amounted to TZS 14,886,557/20. He continued that, despite charging at 6%, the taxing officer taxed off this amount and awarded TZS 10,000,000/=.

With regard to issuance of EFD receipts after the case was concluded, the counsel said that he expected the counsel to show the law which prevents the counsel from issuing a receipt after conclusion of the case but, to his dismay, he did not do that. He clarified that normally the receipts are issued by installments and once the case is concluded it is when they issue EFD receipts.

Regarding the transport costs, Mr. Kitale submitted that the applicant's counsel was not consistent with what she pleaded in the applicant's affidavit. The counsel said that the applicant suggested TZS. 5,000/= in the affidavit but now she proposes TZS. 10,000/=. Mr. Kitale further submitted that there was no need to adduce receipts because sometimes

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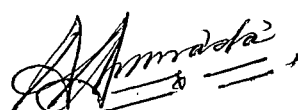


high. See **Tanzania Rent a Car Limited vs Peter Kimuhu**, Civil Reference No. 9 of 2020, CAT at Dar es Salaam, **Attorney General vs Amos Shavu**, Taxation Reference No. 2 of 2000 and **Ecobank Tanzania Limited vs Double Company Limited and Three Others**, HC, Commercial Division at Dar es Salaam

To start with TZS 10,000,000/= which was taxed as instruction fee, the respondent counsel submitted that initially they claimed 14, 830,000/= based on 6% but in the end the taxing officer awarded TZS 10,000,000/=.

I have read the decree arising from the three Consolidated Commercial Cases No. 124 of 2017, 125 of 2017 and 41 of 2019 and found that the claimed amount was USD 54,550, USD 56,213 and USD 18600. Admittedly, the total sum falls under item 7 of the 9<sup>th</sup> Schedule to the Advocate Remuneration Order which provides for instruction fee of 3% to 7% of the claimed amount. The respondent counsel said that they claimed TZS 14,830,000/= based on 6% but the taxing officer reduced it to TZS 10,000,000/=. Under these circumstances, I am opined that the taxed amount of TZS 10,000,000/= was within the ambit of the scale provided under item 7 of the 9<sup>th</sup> Schedule as such, I see no reason to disturb it.

With regard to transport costs, the respondent claimed TZS 40,000/= but the taxing officer taxed TZS 20,000/=. During hearing of this reference,



the applicant's counsel was opined that TZS. 10,000/= would be reasonable. The applicant's counsel also faulted the taxing officer for granting the same in absence of receipts. It should be noted that where an advocate claims that he was using his own vehicle, the issue of receipts becomes unnecessary. See the case **Hotel Travertine LTD vs National Bank of Commerce**, Taxation Reference No. 9 of 2006, CAT at Dar es Salaam. In view of the foregoing and upon considering the circumstances of the case, I am of the considered view that since the advocate used his private transport, TZS. 20,000/= was not excessively high hence I dismiss this complaint as well.

With respect to court attendance, the applicant counsel faulted the taxing officer stating that it was not fair to charge a flat rate of TZS. 50,000/= whilst other attendances were before the court registry and not the judge. In response, the respondent counsel submitted that the law talks of court attendance irrespective whether a party appears before registry or judge. item 3(a) of the 8<sup>th</sup> Schedule provides for TZS. 50,000/= for court attendance per 15 minutes or part thereof. I therefore agree with the respondent's counsel that the law is not specific whether the said attendance must be before a judge. Further, the attendance may be for fifteen minutes or less. As such, in view of the guidance under item 3(a)





of the 8<sup>th</sup> Schedule, the taxing officer cannot be faulted for taxing TZS. 50,000/= per court attendance as the same is provided by law.

That said and done, I dismiss the reference for want of merits. I, however, do not make order as to costs. This is intended to bring the matter to an end.

It is so ordered

Dated at Dar Es Salaam this 22<sup>nd</sup> February 2023.



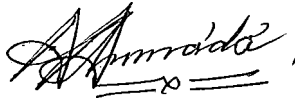
  
**A. A. MBAGWA**

**JUDGE**

**22/02/2023**

**Court:** the ruling has been delivered in the presence of Kelvin Lubango, learned advocate for the applicant who was also holding brief of Mary Lamwai, learned advocate for the respondent this 22<sup>nd</sup> day of February, 2023.



  
**A.A. Mbagwa**

**JUDGE**

**22/02/2023**