

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

COMMERCIAL REFERENCE NO.10 OF 2022

(Arising from the Taxation Cause No. 38 of 2020)

SANLAM GENERAL INSURANCE

TANZANIA LIMITED.....APPLICANT

VERSUS

AMC TRADE FINANCE LIMITED.....RESPONDENT

Date of Last order: 14th February, 2023

Date of Ruling: 15th February, 2023

RULING

A.A MBAGWA J.

This is a ruling in respect of reference against the decision of the taxing officer in the Bill of Costs No. 38 of 2020.

The applicant herein SANLAM GENERAL INSURANCE TANZANIA LIMITED, by way of chamber summons, filed this application under order 7 Rule (1) and (2) of the Advocates Remuneration Order, GN No. 264 of 2015 praying before this honorable court for the following orders: -

1. That this honorable court be pleased to quash and set aside the ruling of the taxing master dated 08th July 2022 in Bill of Costs No.



38 of 2020 for being undercharged and contrary to the scales provided for in the Advocates Remuneration Order.

2. In the alternative to order No.1 above, the court be pleased to vary the ruling of the taxing master dated 08th July 2022 in Bill of Costs no.38 of 2020.
3. Costs of this application be provided for, and
4. Any other reliefs that this honorable court deems fit and just grant.

The application was supported by an affidavit sworn by Dorothea Joseph Rutta.

On the adversary, upon service, the respondent filed a counter affidavit sworn by Faiza Salah refuting all the facts in the applicant's affidavit.

The brief background of the matter may be told as follows; As indicated above this reference arises from Bill of Costs No. 38 of 2020 which originated from Commercial Case No. 9 of 2019. The respondent Instituted the said Commercial Case No. 9 of 2019 claiming against the respondent a sum of USD 840,434.99. However, the case ended in favour of the applicant as such, the applicant filed Bill of Costs No. 38 of 2020 claiming a total sum of Tshs. 152,410,000/= . Upon hearing of the matter, the taxing officer, in her ruling delivered on 8th July 2022, taxed a sum of Tshs 21,760,000/= while Tshs. 130,650,000/= was taxed off.

Aggrieved by the amount taxed, the applicant filed the present reference to challenge the decision of the taxing officer.

During the hearing of this application the applicant was enjoying the legal services of Mudhihiri Athman Magee, learned advocate while respondent was represented by Mr. Gaspar Nyika, learned advocate. The application was argued by the way of written submissions.

Arguing in support of the reference, the applicant's counsel submitted that taxing officer erred by taxing instruction fees at 20,000,000/= contrary to the prescribed scale under item 8 of the of 9th Schedule to the Advocates Remuneration Order. He clarified that the provision prescribes the instruction fees to be charged based on 3% for the claims which exceed Tanzania shillings four hundred million. The counsel complained that he did not see the reason why the taxing officer did not stick to the 3% as prescribed by law. The applicant's counsel proceeded that the factors which are to be considered when assessing the instruction fees are complexity of the matter, time taken to dispose the matter, importance of the subject matter and the value of the subject matter.

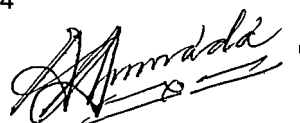
The applicant's counsel lamented that the taxing officer discussed only the two factors in her ruling that is the time taken to conclude the matter and complexity of the matter while ignoring the other factors for assessing

the instruction fees like the value of subject matter as provided under item 8 of the 9th schedule of the Advocates Remuneration Order.

It was further the applicant's submission that the taxing officer erred by assuming that the matter was not complex by only considering the number of the plaintiff witnesses. He continued that the taxing officer failed to consider the three witnesses who testified on behalf of the defendant (applicant in this reference). Further, the counsel submitted that the issue of time taken to conclude the matter is not relevant in commercial cases since it is the law which has put the respective time frame under rule 32(2) of the High Court (Commercial Division) Procedure Rules, 2012.

The applicant's counsel also faulted the taxing officer for taxing Tanzania shillings fifty thousand for each court appearance contrary to item 3 (a) of 8th Schedule to the Advocates Remuneration Order while each court appearance consumed more than one and half hours. The counsel concluded that the taxing officer was supposed to award more than fifty thousand (50,000/=)

In reply, the respondent counsel submitted that the fact that the three witnesses testified for the defendant did not mean the matter was complex rather it could connote that the knowledge of the facts of the defendant's case was divided among the three witnesses. He continued

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that the fact that the claimed amount was USD 840,434.99 does not imply that the matter was complex. The respondent's counsel clarified that the applicant was the defendant in the original case hence the only energy required was to put together facts and evidence to oppose the plaintiff claims. The counsel was opined that the big burden was on the plaintiff (respondent). The respondent's counsel thus concluded that the taxing officer was right in considering the number of the plaintiff witness as among the factors in determining the complexity of the matter.

He further submitted that the suit was quite ordinary in that there was no extensive research or extraordinary energy required to prosecute the same and the effort was minimal due to the nature of the case. The counsel told the court that taxing officer was enjoined to exercise his discretion by considering the circumstances of the case and grant the reasonable fees. To bolster his argument, the counsel referred this court to the case of **ZTE Cooperation Vs. Benson Information Limited Commercial Reference No.3 of 2018** and submitted that as it was held that the overriding principle is that costs should not be excessive or oppressive but only such as necessary for conduct of the litigation.

On the attendance fees, the counsel submitted that the applicable scales in the contentious proceedings are either under the tenth, eleventh or twelfth schedules of the Advocates Remuneration Order. He expounded

that the eighth schedule provides for the scales of fees in respect of business, the remuneration for which is not otherwise prescribed. The counsel proceeded that the scales for fees in contentious proceedings in the High Court are provided for under eleventh schedule hence the eighth schedule was not applicable in these proceedings at the first place. To fathom his argument, he cited the case of **Rose Mkeku Vs. Pervez Shabbirdin**, Misc. Land Application Case No. 89 of 2021 (unreported) at page 5 where it was stated;

"...Taxing officer in determining the quantum payable as instruction fees must consider factor such as the amount of work involved, the complexity of the case, the time taken up at the hearing included attendances, correspondences, perusals and the consulted authorities or arguments..."

The counsel also cited the case of **ZTE Cooperation Vs. Benson Information Limited** (supra) where it was held;

"...as regards the attendance fees I am inclined to agree with the submission made by Mr. Nyika that the instruction fees cover the attendance fees as it concludes all the works done by an advocate in respect of the case that including attending to court to prosecute a case..."

Based on the above cases, he submitted that the attendance fee was already covered under the instruction fees awarded to the applicant and therefore it was proper for the taxing officer to award Tshs. 550,000/= as

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attendance fees. The counsel submitted that since the same was not awardable under the law, there is no legal basis to increase it as it would be contrary to the established principles of law and amounts to double compensation for the work done.

In conclusion, the respondent's counsel submitted that there are no any material irregularities in the taxing officer's decision dated 8th July 2022 warranting interference by this court thus, he prayed this application to be dismissed.

I have keenly gone through the rival submissions along with the depositions filed by the parties. It is clear in the judgment in Commercial Case No. 9 of 2019 from which this matter originated that the respondent was claiming for payment of USD 840,434. 99 among other reliefs. Admittedly, the claimed amount squarely falls under item 8 of the Ninth Schedule to the Advocates Remuneration Order in the sense that the amount claimed exceeds Tanzania shillings 400,000,000/=. The said provision prescribes that instruction fee should be charged based on 3% of the claimed sum. The applicant's counsel submitted that the taxing officer reduced the instruction fee from Tshs. 58,999,536 to Tshs. 20,000,000/= without justiciable reasons.

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Upon navigating through the impugned decision particularly at page 5, I noted that, while arriving at the decision to tax Tshs. 20,000,000/= for instruction fee instead of Tshs. 58,999,536 claimed by the applicant, the taxing officer had the following to say;

'I took liberty to go through the proceedings of Commercial Case No. 9 of 2019 and noted that the suit took one year, that is from 2019 to 2020 when it was finalized. As already stated, the suit was not contentious as only one witness proved the plaintiff's case with only three issues. On that basis I award item 1 at the tune of Tshs. 20,000,000/= only.'

It is a settled position of law that this court is not enjoined to interfere with the discretion of the taxing officer unless the taxing officer acted on wrong principle or the taxed amount was excessively low or 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 Other**, HC, Commercial Division at Dar es Salaam

Throughout the impugned ruling there is nowhere the taxing officer declined application of item 8 of the Ninth Schedule to the Advocates Remuneration Order. However, the reduced the claimed amount from

Tshs. 58,999,536 to Tshs. 20,000,000/= on the grounds that the matter took only a year and that there was only one plaintiff's witness. I have considered the grounds assigned by the taxing officer and the circumstances obtaining in this case. It is common cause that Commercial Case No. 9 of 2019 went through a full trial and a total of four witnesses testified. Having considered the circumstances holistically, it is my unfeigned view that the amount of instruction fee taxed to wit, Tshs. 20,000,000/= was excessively low. And for that reason, I set it aside and substitute it for Tshs. 58,999,536 which was calculated based on 3% of the claimed sum.

With regard to attendance fees, I am opined that the taxing officer correctly taxed them as per item 3 of the Eighth Schedule to the Advocates Remuneration Order. As such, I find no substance in the applicant's complaints.

In the event it is the findings of this court that the instruction fee ought to have been charged as per the value of the subject matter that is to say 3% of USD 840, 432.99 which is the scale provided under item 8 of the the 9th schedule to the Advocates Renumeration Order. Consequently, I set aside the award of Tshs 20,000,000/= and substitute for Tshs 58,999,536.



The reference is therefore allowed to the extent indicated.

I order no costs of this reference in order to bring the matter to an end.

It is so ordered.

Dated at Dar Es Salaam this 15th February 2023.




A. A. MBAGWA

JUDGE

15/02/2023