

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REFERENCE NO. 23 OF 2020**  
(Arising from Bill of Cost No. 55 of 2020)

**TPB BANK PLC** (*as Successor in  
title of defunct Twiga Bancorp Limited*).....**1<sup>st</sup> APPLICANT**

**NAMIC INVESTMENT LIMITED**.....**2<sup>nd</sup> APPLICANT**

**HAIDAR MOHAMMED HARIRI**.....**3<sup>rd</sup> APPLICANT**

**VERSUS**

**DOSCA DIDON KARANJA**  
(*as Administratrix of the Late  
Didon Brown Karanja*).....**RESPONDENT**

**RULING**

*8/05/2021 & 13/9/2021*

**Masoud, J.**

The applicant seeks mainly two types of reliefs under section 7(1), and (2) of the Advocates Remuneration Order, GN No 263 of 2015. The first is an order for this court to call for the record, examine the proceedings, ruling, and drawn order of the taxing master in Bill of Costs No. 55 of 2020 for the purpose of satisfying itself as to their correctness and legality. And the second is to upon finding error to fault, quash, set aside the ruling and determine a proper taxation.

The application was supported by an affidavit of the Mr Innocent Felix Mushi, the applicant's Advocate, and was opposed by counter affidavit of the respondent's Advocate, one, Mr Octavianus Mushukuma. Hearing was conducted by filing of written submissions pursuant to the order of the court which was duly complied with.

The rival submissions were consistent with matters averred in the respective affidavit and counter affidavit. The issues which arose in relation to the reference are: whether the taxing master erred in law by not considering that the respondent did not have a proof of Electronic Fiscal Device Receipts (EFD) as required by law; whether the Taxing Master erred in law by ignoring the decision of the court on the use of EFD without reasons; and whether the Taxing Master erred in law by not considering the applicants' arguments.

In so far as the applicants' counsel is concerned, the above issues were to be answered in the applicants' favour as the errors committed were apparent on the record. The applicant's case was backed by heavy reliance on regulation 14(1) of the Income Tax (Electronic Fiscal Devices) Regulations, 2012 (GN No. 50 of 2012) relating to the requirement for using electronic fiscal device in all business transaction for goods and services; and the case of **Salehe Habibu Salehe vs Manjit Gurmukh and Another**, Reference No. 7 of 2019, and the case

of **Cosmas Kisandu Mizambazya vs Alphonse Mohayo Mdusi**, PC  
Civil Appeal No. 6 of 2020.

The two authorities relate to proof of using EFD in taxation of costs. While the former had it that the proof by EFD receipts is not mandatory, the latter is to the effect that EFD receipt is required in all reimbursement of instruction fee. It was argued on behalf of the applicant that the latter decision (**Cosmas Kisandu's case**) ought to have been followed by the taxing master in the instant case as it was the latest decision instead of the former decision (**Salehe Habibu Salehe's case**). It was further argued that when the taxing master made her decision the former was the latest decision.

On the contrary, the counsel for the respondent was of the view that there was no error committed as alleged by the applicant. It was in a nutshell pointed out that the taxation of bill of costs are governed by the Advocates Remuneration Order (supra), which position, according to the counsel for the respondent, has never been changed by the Income Tax (Electronic Fiscal Devices) Regulations, 2012 (supra). The learned counsel for the respondent went further to show how the taxing master reasoned in relation to the case of Cosmas Kisanda (supra) in arriving at the decision that the case of **Salehe Habibu Salehe** (supra), represents the current position of the law. Strengthening this position.

reference further reference was made to the reasoning of the learned Judge in Salehe Habibu Salehe (supra), as to why she was of the view that proof by EFD was not required.

As restated in the case of **Tanzania Rent a Car Ltd vs Peter Kimuhu**, Civil Reference No. 9 of 2020, 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 rival submissions were by and large confined to the arguments relating to the proof of instruction fee by EFD receipt, and the corresponding argument that a recent decision on the issue was not used and that the arguments by the applicant were not considered. Whilst mindful of the above principle, I was curious to see whether the taxing officer exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong consideration.

In his 13-page ruling, the learned taxing master relied on the cases referred herein by the applicant. I could see the reasoning of the taxing master which took into account the dominant schools of thought on whether EFD receipt is mandatory. Indeed, having so reasoned, the

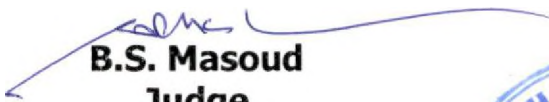
taxing master was of the view that although the case of **Salehe habibu Salehe** preceded the **Cosmas Kisandu's case**, there were no case which so far considered what was articulated by the court in **Salehe Habibu Salehe**. On such reasoning, the taxing master was persuaded to follow the **Salehe Habibu Salehe**. Quite clearly, the reasoning has had regard to the rival arguments made on behalf of the parties.

Reflecting of the grounds set forth in the affidavit and the rival argument that ensued, I was not convinced that the alleged errors were not established to enable this court to find that the taxing master exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong consideration.

In the results, the application is without merit. It is accordingly dismissed with costs.

It is so ordered.

Dated and Delivered in Dar es Salaam this 13<sup>th</sup> day of September 2021.

  
**B.S. Masoud**  
Judge

