

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

MISC. LAND APPLICATION NO. 419 OF 2020

(Arising from Misc. Land Application No. 58 of 2016, High Court of Tanzania, Land Division)

SAUDA SULEIMAN.....APPLICANT

VERSUS

AISHA KARAMA AWADHI..... RESPONDENT

Last date: 28/04/2021

Ruling date: 27/05/2021

R U L I N G

MANGO, J.

Aggrieved by the decision of the taxing master, the Applicant preferred this Application under Order 7 rule 1 of the Advocates Remuneration Order 2015. The Application is by way of Chamber Summons supported by an affidavit affirmed by the Applicant, Sauda Suleiman. The Application is contested by the Respondent.

According to her affidavit, the Applicant is not satisfied with the amount taxed in bill of costs application No. 58 of 2016. She is of the view that there is no justification for the taxing master to award such amount. She also challenged charging instruction fees which is not supported by EFD Receipts.

The Applicant had no legal representation while the Respondent was Represented by Haron Oyugi, learned advocate. On 3rd December 2021, this Court granted the prayer to have the application argued by way of written submissions.

In her submission, the Applicant raised two issues against the amount awarded in the Bill of costs Application. First whether the amount sought to be paid can be proved without EFD Receipt. Second, Whether the amount was taxed in accordance to the law, the Advocates Remunerations Order, 2015

On the first issue, she argued that the Respondent who was the Applicant in bill of costs Application No. 58 of 2016 did not tender EFD Receipts to prove payment of the taxed amount. She argued further that the law, section 36(1) of the Taxi Administration Act, 2015 provides that, any person who supplies goods or render services or receive payment in respect of the service or goods rendered to issue fiscal receipt or fiscal invoice by using electronic fiscal device(EFD). Citing the case of **Professor Emmanuel A. Mjema Versus Managing Editor Dira ya Mtanzania News Paper**, Reference Application No. 7 of 2017, High Court of Tanzania Main Registry, she argued that, failure to support the amount charged in a bill of costs is fatal and that the taxing master ought to have taxed off the amount charged which is not supported by EFD Receipt.

On the second issue, he argued that the taxing master taxed the bill of costs illegally, beyond the scales provided under the 10th, 11th and 12th Schedule of the Advocates Remuneration Order of 2015. She argued that, advocate for the Respondent ought to have charged only 3% of the contract price and not otherwise. She mentioned the value of the contracts to be 60,000,000 and

117,000,000/- only. She concluded that the amount taxed as instruction fees Tshs. 5,000,000/- is unreasonably high.

In his reply submission, Respondent's advocate, Mr. Haron Oyugi submitted that non production of EFD Receipt is not fatal. In this he cited a number of cases in which this Court held that non production of EFD Receipts is not fatal. The cases include the case of **Salehe Habib Salehe versus Manjit Gurmukh Singh and Another**, Reference No. 7 of 2019, High Court of Tanzania. Land Division at Dar es Salaam which was decided by my sister, Hon. Makani J and other cases.

On whether the bill of costs was taxed in accordance with the law, he argued that the relevant provision is Item 5 of the 9th Schedule to the Advocates Remunerations Order. However, the provision provides for fees for contentious proceedings for liquidated sum in origin and appellate jurisdiction. He argued further that, Land Case No. 136 of 2015 involved land dispute and not liquidated sum of money. Thus, the taxing master was correct to exercise its discretion under Order 12(1) to tax off Tshs. 20,756,000/-. He is of the view that even if the taxing master would have employed the provisions of the Advocates Remuneration Order, 2015, the amount taxed would not have changed to a lower figure.

I have considered submissions by both parties. I agree with the submission of the Respondents counsel that non production of EFD Receipt is not fatal. The Provisions of Advocates Remunerations Order does not provide for requirement to prove instruction fees by any kind of receipt. It merely provides scales of fees for proceedings of various nature. The duty of the taxing master is not to check whether the amount presented in the bill of costs was paid. His duty is only to check whether the amount charged in the bill of costs complies with the

scales provided in the Advocates Remuneration Order. Order 46 of the Advocates Remunerations Order, GN 263 of 2015 provides that:

All bills of costs shall be taxed on the prescribed scale, unless a Judge of the High Court, for special reasons to be certified, allows costs in addition to cost provided by the scale or refuses to allow costs at a lower rate than that provided by the scale.

The duty of the taxing master in the bill of costs application is to ensure that the amount charged as instruction fees, tallies with the scales provided in the Advocates' Remuneration Order, 2015. The taxing master can tax off excess amount if he found that the amount charged is beyond the provided scales.

The Court of Appeal of Tanzania, in the case of **Tanzania Rent a Car Limited Versus Peter Kimuhu**, Civil Reference No. 9 of 2020 held that in taxation of bill of costs there is no need of proof of instruction fees by presentation of EFD receipts, vouchers and or Remuneration Agreement.

For that reason, the first ground of reference is hereby dismissed.



The second ground is also dismissed for being unmeritorious. The 9th Schedule of the Advocates Remunerations Order, which was also referred by the Applicant to be the applicable law, provides that fees for any claim between 70,000,000/- and 150,000,000/- to be 5% to 8%. The Applicant mentioned the value of the property involved in Land Case No. 136 of 2015 to be Tshs 60,000,000/- and Tshs. 117,000,000/-. She also argued that the taxing master ought to have taxed instruction fees not exceeding 3% of the mentioned value. Simple calculations indicate that the value involved as per explanations given by the applicant is Tshs. 177,000,000/-. Three percent of the amount is Tshs. 5,310,000/- which is more than the amount taxed as instruction fees. If the

taxing master would have charged in accordance to the scale, that is 5%, the instruction fees would have been taxed more.

The taxing master taxed Tshs. 460,000/- as attendance fees, Tshs. 78,000/- as disbursement and 1,000,000/- as fees for attending taxation proceedings. He clearly stated that the advocate must have spent money and expertise thus he deserves to be reimbursed to the extent taxed.

As correctly argued by the Respondents counsel, the taxing master justifiably exercised his discretion and taxed the bill of costs in accordance with the law. In such circumstances, I find no reason to interfere with the decision of the taxing master.

The Application is hereby dismissed. Given the nature of this application and the courts desire to have finality of proceedings, I do not award any costs.



Z. D. MANGO
JUDGE
27/05/2021