

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

AT DAR ES SALAAM

REFERENCE NO. 22 OF 2020

(Arising from the decision of the Taxing Master in Bill of Costs No. 174 of 2018)

ELIZABETH TIMOTH BALALI.....APPLICANT

VERSUS

ZAINABU RIZIKI BAKILANARESPONDENT

RULING

Date of last order; 11/08/2021

Date of Ruling 31/08/2021

T.N. MWENEGOHA, J.:

The applicant seeks two types of reliefs under section 7(1) of the Advocates Remuneration Order, GN No 263 of 2015. The **first** relief is this Court be pleased to examine the proceedings, ruling and drawn order of the Taxing Master in Bill of Costs No. 174 of 2018 for the purpose of satisfying itself as to the correctness, legality or propriety of the proceedings, ruling and the drawn order arising thereon and the **second** is to reverse, quash, revise or set aside the ruling in the said Bill of Costs No. 174 of 2018.

The application was supported by an affidavit of the applicant and was opposed by counter affidavit of the learned counsel for respondent, Mr. Fraterine Lawrence Munale. Hearing was conducted by filing of written submissions pursuant to the order of the Court which was duly complied with. Advocate Sauli Santu Makori from Magma Law Chamber

represented the applicant while Advocate Norbert Didas Tarimo appeared for respondent.

In his submission, the Mr. Makori submitted in accordance to what applicant averred in her affidavit. his submissions emphasized the Taxing Master taxed the Bill of Cost without proof of the value of the suit property and also awarded amount of Tsh. 450, 000/= which was not claimed by the respondent therefore, he is in opinion that the amount awarded is huge compared to work done, considering the matter ended in preliminary stage by way of preliminary objection. He emphasized by citing the decision of Court of Appeal of Tanzania in **Tanzania Rent A Car Limited Vs. Peter Kimuhu, Civil Reference No. 09 of 2020.**

In response to Mr. Makori's submission, Mr. Tarimo contested that, the Taxing Master exercised his discretion according to the law as provided for under the Nineth Schedule to the Advocates Remuneration Order, 2015 GN. No. 264 of 2015, and he did not violate any principle of law for this Court to interfere with his decision. That, the same involved the time spent by learned counsel for respondent in making research and preparation, amount of work involved, costs incurred complexity of the case, and value of the subject matter. That since the Taxing Master reduced charge at the rate of 3% instead of 7% it was fair enough for both parties. He cemented his argument by citing the case of **Gautam Jayram Chavda V. Covell Mathews Partnership, Taxation Reference No. 21 of 2004**, CAT at Dar es Salaam.

I have gone through the submissions of both parties and the affidavits thereon in respect of this Application, I have also read through the decision of the Taxing Master. It is a general rule that the Taxing Master's

decisions are discretionary decisions. This Court can interfere only if the taxing officer exercise his discretion injudiciously or has acted upon a wrong principle or applied a wrong consideration. In the Case of **Premchard Raichand Ltd and Another Vs. Quarry Services of East Africa Ltd and Others No. 03 of 1972 1 E. A. 162** the Court of Appeal of Eastern Africa laid down four principles to be considered in determining the quantum of instruction fee; these are

1. **The costs shall not be allowed to rise to such level as to confine access to the courts to only the wealthy;**
2. **That, the successful litigant ought to be fairly reimbursed for the costs he reasonably incurred,**
3. **The general level of the remuneration of advocates must be such as to attract worthy recruits to an honourable profession.**
4. **That, there must, so far as practicable be consistency in the award made.**

It has been adjudged severally that, instruction fees include all the work that had been done in preparing all documents such as drafting of the pleadings, appearance to Court and perusal of documents. It also includes the process of prosecuting the matter such as conducting research, drafting, filing necessary documents and serving the opponent. In the case of **George Mbuguzi vs. A.S. Maskini (1980) T.L.R.53** where the cases of **Sianga vs. Elias (1972) H.C.D. n.66** and **In the Matter of the Stamp Ordinance, 1931 and the Buhemba Mines Limited,**

Miscellaneous Application No. 1 of 1940 were quoted with approval, it was held at page 56 that:

"....In my opinion the word 'instruction' in our rules should be construed as if it were a term of art, but should be construed in relation to the conditions and circumstances of the country in which those rules are to be operated. Here an advocate is both Solicitor and Barrister, and the meaning that has been given and in my judgement rightly given, to the words 'Fees for Instruction' was that they are intended to cover, not merely the attendance of a Solicitor when he takes his client's instructions, but all his work, other than that which is elsewhere especially provided for, in looking up the law and preparing the case for trial; in other words they correspond rightly to the fee marked on Counsel's brief."

In consideration of item 1(m) (aa) of the Eleventh Schedule to the Advocate Remuneration Order, 2015 which states that;

"(aa} The Taxing officer in the exercise of his discretion shall take into consideration the fees and allowances to the advocate (if any) in respect of the work to which such allowances applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, and all other relevant circumstances;"

In my observation, with regard of and from the face of it in the decision of the Taxing Master that transpired in this suit, there is nowhere, were items that were presented were not taxed accordingly. The Taxing Master, as correctly stated by Mr. Tarimo and as I observed in his ruling, concentrated on two items which are instruction fee taxed at the tune of Tshs. 9, 000,000/= and advocate's attendance and transport which was taxed at Tshs. 450,000/= which made a total sum of nine millions, four hundred and fifty thousands (Tshs. 9,450,00/). In my view, the amount of Tshs. 9,450,000/= is the proper total calculation according to amounts taxed by the Taxing Master. I say so because initially the value of subject matter was never contested to be below three Hundred million (Tshs. 300, 000,000/=) and the Taxing Master adopted the minimum scale of 3% to arrive to the Sum of Tshs. 9,000,000/= (nine million) as instruction fee. In my opinion the Taxing Master really observed *Item 7 of the ninth schedule to the Advocate Remuneration Order, 2015* of the value of subject matter.

However, considering the circumstances of the case, I find the amount of Tshs,9,000,000/= taxed as instruction fees to be unreasonable as the matter was concluded at the preliminary stage and the suit was only within the Court premise for less than four months. That is to say the **Land Case No. 70 of 2018** span was less than five months computing from the date when the instruction fee was paid to the date it was dismissed. Moreover given the fact that there was no receipt proving the said amount being paid (even if there is no figure or amount charged as instruction fee is fixed by the statutes but still) the award of Tshs. 9,000,000/= for the matter that has been determined at preliminary stage with life span of less than five months is very high. So, I will not leave the

taxed amount as it is, and since there is no proof of the said instruction fee, the taxed amount is therefore reduced to TZS 5,000,000/= (Tanzania Shillings five Million) only.

The second Item was on transport and attendance for all fifteen days spent in Court. Since the law does not need receipts to prove how the same is spent, it is my opinion that the amount of Tshs. 50,000/= for each day in court which made the total of Tsh. 450,000/= was justly and properly taxed and it remains as it is.

On the foregoing, I hereby reduce the total sum of amount of Tsh 9,450,000/= awarded by Taxing Master in Bill of Costs No. 174 of 2018 to the tune of Tsh. 5,450,000/= which comprise of Tsh. 5,000,000/= as instruction fee and Tshs. 450,000/= as transport and attendance fees. No costs to this application.

It is so ordered.

Dated at Dar es Salaam this 31st day of August, 2021.




T.N. MWENEGOHA
JUDGE