

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

REFERENCE NO. 13 OF 2020
(Originating from Bill of costs No. 167 of 2018)

JOACHIM NDELEMBI..... APPLICANT

VERSUS

MAULID M. MSHINDO1ST RESPONDENT
MAHIMBO MTANDA.....2ND RESPONDENT
HAMISI ABDALLAH3RD RESPONDENT

R U L I N G

Date of Last Order:25/10/2021
Date of Ruling:30/11/2021

T. N. MWENEGOHA, J.

The applicant one, Joachim Ndelembi filed the present application under order 7(1) and 48 of the Advocates Remuneration Order 2015 praying among other orders for this Court to find and hold that the claim presented in the Bill of Costs No. 167 of 2018 arising from Land Appeal No. 189 of 2018 is not justified.

The Application is supported by the Affidavit of the applicant and countered by the joint affidavit of the respondents.

On 17/05/2021 this Court through Hon. Maghimbi, J. ordered the Application be heard by way of written submission. Hon. Maghimbi, J. is now transferred to another working station and the file has been reassigned to me, upon my perusal I find the submissions are complete, therefore this Ruling.

Advocate Alphonse Katemi represented the applicant while Mohamed Menyanga, Advocate represented the respondents.

In his submissions Mr. Katemi submitted that the respondents presented a Bill of Costs amounting to Tshs. 13,300,000/= for taxation before the taxing, where the Taxing Master awarded Tshs. 2,200,000/=. It is his submission that than one sixth of the total claim is Tshs. 2,216,667/= and the disallowed amount is Tshs. 11,100,000/= which is for more than one sixth of the total claim.

He then cited order 48 of the Advocates Remuneration Order, 2015 and stated that the Taxing Master did not take into consideration of the cited provision of the law which is relevant to the Bill of Costs. He then submitted that the whole Bill of Costs should be disallowed. He therefore prayed for this Application be allowed and decision of the Taxing Master be quashed.

In reply Mr. Menyanga submitted that the Taxing Master referred to provision of Order 12(1), 13 and 60 of the Advocates Remuneration order, 2015 GN No. 265 and awarded reasonable amount and had taken into consideration with factors as required by the law such as complexity of case, time spent, extent of making research, its nature and interest of the matter. It is his submission that the amount awarded is very reasonable as far as instruction fee is concerned for there respondents.

In rejoinder Mr. Katemi still insisted that the amount disallowed was far beyond the legal threshold of one sixth of the total claim in the Bill of Costs. Having heard submission of both parties, the issue for determination is whether the Taxing Master was correct in its determination.

The question that gave rise to the Application is Order 48 of the Advocate Remuneration order, 2015 which provides that:-

"When more than one sixth of the total amount of the Bill of Costs exclusive of court fees; is disallowed, the party presenting the Bill for Taxation shall not entitled to the costs of such taxation."

Mr. Katemi argue that the respondent was awarded 2,200,000/= out of 13,300,000/= that is far below one sixth of the amount claimed, therefore he should not be entitled for costs of taxation for the reason. To Mr. Menyanga the amount paid is reasonable as far as instruction fee is concerned.

I am aware of the position of the cited case by the applicant, that of the **Regional Commissioner of Shinyanga vs. Bernard Msango Sizasiza, Civil Reference No. 01 of 2019 at High Court Shinyanga** where it was held that:-

"I am persuaded by the above authority. Since in our case, the Taxing Master avoided the provision of 48 Applicants is justified. I hereby quash and set aside the taxing Master's decision, allow the Application and order that having disallowed above then one

sixth of the claimed costs in the Taxation No. 5 of 2018, respondents were not entitled to costs."

Also, there is another school of thought in determining Order 48 of the said Act as seen in the case of **Julius Mwarabu vs. Ngao Godwin Losero, Civil Reference No. 4 of 2020, High Court of Tanzania at Arusha** where Honorable Judge recognized the discretion of the Taxing Master and stated that:

"the essence of having this provision of the law in place is a prohibition of exaggeration or inflating costs of cases by litigants who aim at enriching themselves in cases where they emerge victories.

However, in my view, that discretion should be applied in special circumstances. I am saying so simply because there is no dispute that, the applicant enjoyed legal services from a private advocate and not from legal aid or on pro bono basis".

Honorable Judge in this case further quoted with approval the case of **Tanzania Rent a Car Limited v. Peter Kimuhu, Civil Reference No. 9 of 2020 (unreported)** where a justice of Appeal held:-

"As argued by the counsel for the parties, 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 with the decision unless it is proved that the taxing officer exercised his discretion injudiciously".

In applying particulars of this case, I subscribe to the second school of thought whereas so long as the respondent enjoyed the legal service from the Counsel and the Taxing Master taxed the instruction fee as per the requirement of the law. As stated in the case above these costs are granted under discretion of Taxing Master. Who is supposed to exercise his discretion judiciously.

Having said that I see the respondents was to be reimbursed for the costs incurred, and so long as the taxing Master see under his discretion that amount is fit to be tax, I join hands with her.

The Application has no merit and it is therefore dismissed with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

30/11/2021