

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

CIVIL REFERENCE NO. 03 of 2021
(Arising from Bill of Costs No. 490 of 2020)

SHAHISTA ADAMS.....APPLICANT/JUDGMENT DEBTOR

VERSUS

**JITESH JAYANTILAL
WALJI LADWA.....1ST RESPONDENT/DECREE HOLDER**

**HOUSES AND HOMES
LIMITED.....2ND RESPONDENT/DECREE HOLDER**

Date of last order: 14/02/2022
Date of Ruling: 22.02.2022

RULING

V.L. MAKANI, J

The applicant SHAHISTA ADAMS has moved this court under Order 7(1) and 48 of the Advocate Remuneration Order (GN.No.264 of 2015) (hereinafter the **Remuneration Order, 2015**) for the following Orders:

- (a) *That this honourable Court be pleased to quash and set aside the finding in the Bill of Costs No. 490/2020 arising from Land application No. 58/2020 on account that, Taxing Master erred in computation based on the value of the subject matter worthy TZS 600M and the taxed amount is not justifiable due to the fact that the taxing master has taxed more than one sixth of the total bill presented by the decree holder.*

(b) *The costs of this application be provided in the due cause.*

(c) *Any other relief (s) this Honourable Court may deem fit to grant.*

The application is supported by the affidavit sworn by the applicant. And the respondents advocate Mr. Sisty Bernard swore a counter affidavit to oppose the application. With leave of the court the application was argued by way of written submissions.

Submitting in support of the application, Mr. Alex gave a brief background of the matter and added that the applicant is faulting the Taxing Master as he grossly erred in computation of the awarded professional fees. He said the amount taxed is wrongly computed contrary to the scale in the Ninth Schedule where it provides for scale of fees for contentious proceedings for liquidated sum in original and appellate jurisdiction. He said the Taxing Master applied the rate of 3% of the value of the subject matter which is not correct. He said under the said Schedule, 3% is charged for liquidated sum which is not the case at hand. He said the value of the suit property is 600,000,000/= which has been arrived based on the market/sale value. He said there is a need for a certified Government Valuer's

Report as the value of the suit premises cannot be ascertained without support of the Valuation Report by a registered Valuer. He insisted that the value of the subject matter cannot be on speculations. Counsel further argued that, under Item 8 of the Ninth Schedule, 3% covers the liquidated sum over 400,000,000/= under which the value of 600,000,000/=, falls but unfortunately and strictly should be based on the liquidated sum which was not the case in the District Land and Housing Tribunal for Kinondoni (the **Tribunal**).

Counsel for the applicant further argued that the respondent presented at the Tribunal Bill of costs of TZS 40,000,000/= to be taxed. That the Taxing Master awarded only 18,000,000/= disallowing 32,000,000/= which he said in simple arithmetic it is one sixth of the TZS 40,000,000/=, that is, TZS 6,666,667.7 of the claimed amount in the bill of costs. He said that the Taxing Master having disallowed TZS 32,000,000/= he was under obligation under Order 48 of the Remuneration Order, 2015 to find and decide that the respondent had presented excessive bill of costs as such they were not entitled to any payment. He said the Taxing Master failed to observe the statutory prerequisite in Order 48 of the Remuneration Order, 2015 and therefore the decision of the Tribunal ought to be

quashed and set aside with costs. Counsel for the applicant relied on the cases of **John Momose Cheyo vs. Stanbic Tanzania Limited, Commercial Reference No.72/2018 (HC Commercial Division DSM)** and **East African Development Bank Vs Blue Line Enterprises Ltd, Taxation Reference No.2/2000 (CAT-DSM)** (both unreported) where he said the Court, among other things observed that as a general rule the allowance for instruction fees is a matter of peculiarity in the Taxing Master's discretion and courts are reluctant to interfere with that discretion unless it has been exercised injudiciously. Counsel insisted that this Court is vested with powers to interfere with the award of the Taxing Masters. That the discretion vested to the Taxing Master was not correctly used and he wrongly applied the principle to use a subject matter value of TZS 600,000,000/= to award Bill of Costs which was not a quantum claimed by the applicant. That there are no good reasons assigned to arrive at the awarded amount and no clear reference of law was made.

Further, Mr. Alex argued that, the matter at hand never went to the stage of full trial but ended by a preliminary objection argued orally in a single day. He said this was apart from the filing the Written

Statement of Defence (the **WSD**) and subsequent amendment of the **WSD**. He said there was also a hearing of the application for injunction. He said that the stage could not attract the fees taxed off at TZS 18,000,000/=. That the Taxing Master failed to consider the that: (i) the application consumed hardly 3 months from 10/02/2020 when it was filed to the final determination, (ii) most of the adjournments were in the instance of the applicants, and (iii) the objection was argued orally therefore there was no energy used as there was no significant amount of research conducted and no senior advocates were involved. In support thereof Counsel cited the case of **C. B. Ndege vs. E.O Alias & Attorney General [1988] TLR 91**

Counsel further stated that there were no EFD Machines receipts attached or vouchers of disbursements and that was fatal to the Bill of Costs. That under Order 58(1) of the Advocates Remuneration Order, 2015 it is mandatory to produce those vouchers and receipts at the hearing. He said in the present case this was not done. That an advocate is a registered taxpayer under section 29 (1) of the Value Added Tax Act 2014 and therefore the EFD receipts were necessary to prove the amount claimed. He insisted that the one who alleges must prove as per section 110 (1), (2) and 111 of the Evidence Act

CAP 6 RE 2019. That the respondent had a burden of proving what he was claiming to the Taxing Master. He said that in the case of **John Momose Cheyo** (supra) it was observed that items not justifiable by supply of EFD receipts should be taxed off.

Counsel went on to submit that items 2,3,4,5,6,7,8,9,10 and 11 of the Bill of Costs were within the charged professional /instruction fees which is defined to cover all the prosecutions, preparatory legal works including an advocate attendance to court proceedings. That item 6 and 11 are functions normally performed by non-advocates but if it happens, then he would only be paid part of the disbursements supported with relevant vouchers/receipts below in the tabular Bill of Costs. Counsel reiterated his submissions and prayed for the application to be allowed with costs.

In reply, Mr. Sisty said the bill of costs was orally argued and the amount of TZS 18,710,000/= out of TZS 40,710,000/= was taxed. That TZS 22,000,000/= was taxed off. He said that the court can only interfere with the decision of the Taxing Master where it is clearly demonstrated that the said Taxing Master exercised his/her discretion injudiciously. He said that the Taxing Master did not error in allowing

instruction fees at TZS 18,000,000/=. He said there were no plausible reasons given for the court to interfere with the awarded amount as instruction fees. He said that what was awarded is TZS 18,000,000/= as instruction fees and TZS 710,000/= on attendance and disbursements. He submitted that the marginal notes do not form part of the statute and therefore it was wrong for the applicant's Counsel to rely on marginal notes of Order 48 of the Remuneration Order that the bill was excessive and ought to be disallowed. He added that an advocate would not prepare for hearing of the preliminary objection only but for the whole matter therefore submissions by the applicant's Counsel that the matter ended in preliminary objection and therefore the fees should have been less is misplaced. He added that the scale for charging such kind of proceedings is provided for under Item 8 of the Ninth Schedule to the Remuneration Order, 2015, that is, 3% for any amount from TZS 400,000,000/= and above. That the value of the subject matter at the Tribunal was TZS 600,000,000/= and that the Taxing Master applied well the law. He said that even Counsel for the applicant has not stated the right scale to be charged.

On EFD receipts Mr. Sisty stated that it is not the duty of the Court to enquire on the issuance of the EFD receipts but Commissioner General of TRA. He further emphasized that the taxation subject of this reference involves land disputes and not tax disputes. That the Remuneration Order, 2015 contain no provision (s) which requires the proof of the instruction fees by EFD Receipts. He said that the tax provisions cited by the applicant's counsel are used when an advocate has a tax dispute with TRA and that there is no need of receipts, vouchers or remuneration agreement to prove instruction fees. Counsel relied on the case of **Tanzania Rent A Car Limited vs. Peter Kimulu, Civil Reference No.9 of 2020 (CAT-DSM)** and insisted that it is not mandatory to produce receipts and vouchers for all disbursements at the hearing. He prayed for this application to be struck out with costs.

In rejoinder, the applicant reiterated his main submissions and added that the hearing of the matter on merit would have attracted respondents Counsel to prepare the witness and lead them on examination in chief together with the respondent's Counsel retiring for the preparation of the final submissions which parties did not reach at that stage.

I have listened to rival submissions by learned Counsel. The main issue for determination is whether this application has merit.

The general principle in taxation of bill of costs is that this court will only interfere with an award of a Taxing Master where the award is so high or so low as to amount to an injustice or where the decision is based on an error of principle (see **East African Development Bank** (supra). Accordingly, it is the principle of the law that there is no need of receipts, vouchers or remuneration agreement to prove instruction fees (see **Tanzania Rent A Car** (supra). In that regard, the argument by Mr. Alex on this issue has no merit especially where the matter is provided for in the scale according to the Remuneration Order. However, where no scale is provided then it is logical for the Taxing Master to ask for any document to assist or decide to consider other factors such as the amount of work involved, the complexity of the work, the time and energy taken in the prosecuting/defending the matter in court.

In proving the amount for instruction fees, Mr. Sisty relied on Item 8 of the Ninth Schedule to the Remuneration Order. However, this

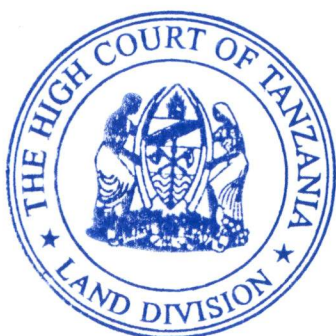
Schedule is basically for scale of fees in contentious proceedings for liquidated sum in original and appellate jurisdiction. Land Application No. 490 of 202, the subject of the bill of costs, involved a land dispute and not liquidated sum of money. In that regard, the decision of the Taxing Master based on Item 8 of the Ninth Schedule to the Remuneration Order was misplaced. The Taxing Master was supposed to exercise his discretion under Order 12(1) of the Remuneration Order.

The amount taxed as instruction fees is **TZS 18,000,000/=**. I agree with Mr. Alex that this amount is excessive and unreasonable considering that Land Application No.490 of 2020 was not complex to render the amount taxed as instruction fees. The matter was concluded at the earliest possible time by way of a preliminary objection; and in my view, there was no excessive amount of energy and effort that was involved in the matter to warrant the amount of **TZS 18,000,000/=** taxed as instruction fees. I am well aware, as I have stated above, that the Taxing Master is required to consider what is reasonable in the circumstances of each case, bearing in mind the nature and importance of the matter, difficulty, the subject matter

involved, interest of the parties and general conduct of the proceedings. The fact that the case was not heard on merits as it was dismissed on the preliminary stage is an obvious fact that the complexity and the time taken would not warrant the amount that was taxed for instruction fees. I thus reduce the amount taxed as instruction fees from **18,000,000/=** to **TZS 5,000,000/=**. I shall not disturb the amount of **TZS 710,000/=** taxed for disbursements and attendance as I find the amount reasonable.

In the circumstances the application is allowed to the extent that the total bill of costs taxed is hereby reduced to **Tanzania Shillings Five Million Seven Hundred and Ten Thousand** only (**TZS 5,710,000/=**).

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
21/02/2022