

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

REFERENCE NO. 8 OF 2021

(Arising from Bill of Costs No. 78 of 2019 of the High Court Land Division)

STEPHEN VITUS MAPUNDA APPLICANT

VERUS

YOHANA M. MCHALO RESPONDENT

Date of last order: 08/07/2022

Date of ruling: 24/8/2022

RULING

I. ARUFANI, J.

This ruling is for the application for reference lodged in this Court on 29th June 2021 by the applicant seeking for the following reliefs: -

- i. That the Honourable Court be pleased to quash the decision and orders of the Taxing Master of this Court (Hon. C. M. Tengwa) in Bill of Costs No. 78 of 2019 delivered on the 21st January 2020.*
- ii. Costs of this application be provided for.*
- iii. Any other reliefs this honourable Court may deem just and equitable to grant.*

It is on record that the applicant lodged in this court Application No. 888 of 2016 seeking for extension of time to file in the court a notice of

appeal to appeal to the Court of Appeal. Having heard the parties on the said application the court struck out the application with costs. As the respondent was awarded costs in application No. 888 of 2016, he proceeded to lodge bill of costs No. 78 of 2019 in this court. The said bill of costs was heard and subsequently taxed at Tsh 9,220,000/= being instruction fees and other costs incurred in the matter. The applicant was aggrieved by the said award and challenged the same by filing in the court the reference at hand.

In this application, MR. Robert Oteyo, learned advocate represented the applicant and Mr. David Raphael, learned advocates appeared for the respondent. The application was argued by way of written submissions.

The applicant faulted the bill of costs for being illegal and without considering the law applicable. According to the applicant's counsel the eleventh Schedule to the Advocates Remuneration Order, 2015 provides for how costs of proceedings in the High Court, subordinate Courts and Tribunals should be charged. He submitted that, since the application giving rise to the impugned bill of costs was contested the amount chargeable ought to have been Tsh 1,000,000/= as clearly provided under item (m). The applicant submitted further that, charging more than the prescribed amount is illegal and unjustifiable. The applicant's counsel argued that, the

taxing master should have awarded the respondent Tsh 1,000,000/= as instructions fee and no more.

In reply the counsel for the respondent contended that there was no harm on the taxing master to use his discretionary power in awarding the respondent the sum of Tsh 9,220,000/- as bill of costs. He argued that, the respondent has been dragged in courts by the applicant unnecessarily since 2013. He submitted the respondent was entitled to be healed his wounds caused by the applicant. He submitted further that, the bill of costs was awarded as per the principles adopted by the Court of Appeal in the case of **Kitinda Kimaro v Anthony Ngoo and Another** Civil Application No. 576/02 of 2018 Court of Appeal of Tanzania at Arusha (unreported). It is for that reasons the respondent's counsel prayed the application be dismissed for being devoid of merit.

In rejoinder the applicant's counsel reiterated his submission in chief and insisting that, the amount awarded to the respondent was high hence the same should be reduced.

Having gone through the rival submissions from the counsel for the parties and after going through the chamber summons and its supporting affidavit the court has found the issue for determination in the present

matter is whether the amount of Tsh 9,220,000/= awarded to the respondent by the taxing master as costs of the suit is high.

The court has found that, as argued by the counsel for the applicant the law governing the award of bill of costs in the High Court and Courts subordinate thereto and Tribunals is the Advocates Remuneration Order, 2015 G.N. No. 263 Published On 17/07/2015. The amount prescribed for application which has been contested as appearing at item 1 (m) of the eleventh schedule to the Advocate Remuneration Order is Tshs. 1,000,000/=.

The court has found the Application No. 888 of 2016 was contested and it was disposed of by way written submission. In awarding the respondent the sum of Tshs. 8,500,000/= as instruction fees the taxing master did not assign justifiable reason to award the stated amount. The court has found that, although it is true as argued by the counsel for the respondent that, order 12 (1) of the Advocate Remuneration Orders gives the Taxing Officers discretionary power to award costs which appear to him to be necessary or proper for the attainment of justice but the court has been of the view that, the amount awarded to the respondent as an instruction fee was exorbitantly high.

The court has found it is contrary to the rules applicable in awarding costs discussed in number of cases. Those cases include **Kitinda Kimaro** (supra) cited in the submission of the counsel for the respondent and **Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and others (no 3)** [1972] 1 E.A. 162 where the erstwhile Court of Appeal for East Africa laid down four guiding principles which has to be considered when determining the quantum of an instruction fee to be awarded in a case where costs has been granted. The said principles are: -

- i. That costs shall not be allowed to rise to such a level as to confine access to the courts to only the wealthy;*
- ii. That the successful litigant ought to be fairly reimbursed for the costs he reasonably incurred;*
- iii. The general level of the remuneration of advocates must be such as to attract worthy recruits to an honourable profession;*
- iv. That there must so far as is practicable, be consistency in the awards made both to do justice between one person and another and so that a person contemplating litigation can be advised by his advocates very approximately what, for the kind of the case contemplated, is likely to be his potential liability for costs.*

The court has found in the present matter there is nothing suggesting that the respondent incurred costs worthy Tsh 8,500,000/=. The counsel for

the respondent contends in his reply submission that, the applicant has dragged the respondent in courts since 2013 hence his wounds must be healed. This argument is misplaced as the bill costs complained of is arising from Application No. 888 of 2016 and was determined on 19th March, 2019. It was not about the matter filed in the court in 2013.

I am of the settled view that, the application giving rise to the bill of costs filed in this court by the respondent was not the one involving complex issues as it was just an application for extension of time for filing in the court a notice of appeal to appeal to the Court of Appeal. The court has found that, although the application stayed in the court from 2016 to 2019 when it was determined but that alone is not a sufficient ground for the Taxing Officer to award the amount of instruction fees awarded to the respondent.

The court has found the Taxing Officer stated to have granted the stated amount because it was supported by EFD and normal receipts which showed the instruction fees charged from the respondent was Tshs. 8,500,000/= . The court has failed to see justification of basing on the said receipts to award the stated instruction fees to the respondent. The court has come to the stated finding after seeing that, although the Taxing Officer doubted the said receipts but she proceeded to grant the sought instruction fees without justifiable reason to grant the same.

The court has been of the view that, it was unsafe to rely on the said receipts because it was not stated why the normal receipt for the stated instruction fees was issued on 11th November, 2016 and the EFD receipt for the same purpose was issued on 13th May, 2019 which was after the decision of the court being pronounced. To the view of this court that create an impression that the EFD receipt was prepared and issued for the purpose of justifying grant of the sought amount and not necessarily that it represented the true instruction fees charged from the respondent.

The court has also come to the above stated view after seen the matter was not complex to the extent of charging the claimed amount. After taking into consideration the nature and complexity of the matter and the duration spent in prosecuting the matter the court has found Tshs. 2,000,000/= would have been sufficient enough to cover the instruction fees. It is because of the above stated reasons the court has found the amount claimed by the respondent was required to be reduced.

In the premises the amount of Tshs 8,500,000/= awarded to the respondent as an instruction fee is hereby reduced to Tshs. 2,000,000/= and Tshs. 6,500,000/= is hereby taxed off. As the applicant has only challenged the instruction fees awarded to the respondent, the rest of the amount awarded in the bill of costs is left without alteration. In the upshot the

application of the applicant is hereby allowed to the extent stated hereinabove and total amount of costs to be paid to the respondent is Tshs 2,720,000/=. It is so ordered.

Dated at Dar es Salaam this 24th day of August, 2022



Jesse
I. Arufani

JUDGE

24/08/2022

COURT:

Ruling delivered today 24th day of August, 2022 in the presence of Mr. Victor Kessy, learned advocate holding brief for Mr. Robert Oteyo, learned advocate for the applicant and in the presence of Mr. David Raphael, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



Jesse
I. Arufani

JUDGE

24/08/2022