

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

REFERENCE NO. 11 OF 2021

(Originating from Ruling and its drawn order of Taxation Cause No. 341 of 2021 at the District Land and Housing Tribunal for Kinondoni at Mwananyamala)

BETWEEN

CHEGERE CHRISTOPHERAPPLICANT

VERSUS

RESTITUTA MABITI SHABI..... 1ST DEFENDANT

RULING

Date of last Order: 26/09/2022

Date of Judgment: 30/09/2022

A. MSAFIRI, J.

This is the ruling on application for reference lodged in this Court by an applicant one Chegere Christopher. He is seeking for the following reliefs namely;

- a) That this Honourable Court be pleased to set aside and quash the decision of Honourable Mbilinyi Chairperson Taxing Master dated 02nd November 2021 styled as Taxation Cause No. 341 of 2021.

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- b) This Honourable Court be pleased to re-assess the costs awarded being huge without justification and also consider that Taxation Cause No. 341 was filed out of time.
- c) Costs to follow the event.
- d) Any other relief this Honourable Court deems fit and just to grant.

The background of this application as per records is briefly that previously, the current respondent herein filed an Application No. 322 of 2016 before the District Land and Housing Tribunal of Kinondoni (herein as trial Tribunal). The said matter proceeded ex-parte against the current applicant. During execution of the Court decree, the applicant became aware and filed Miscellaneous Application No. 735 of 2018 seeking extension of time upon which to set aside ex-parte judgment and decree. After hearing of the said miscellaneous application, the trial Tribunal dismissed the said application and awarded the respondent herein costs of the case.

Following that, the respondent herein filed Bill of Costs No. 341 of 2021 claiming a total of Tshs. 5,018,000/= as costs. After hearing of the matter before the Taxing Officer, the respondent was awarded Tshs. 2,948,000/= instead of Tshs. 5,018,000/=.

The applicant was aggrieved and has preferred the present application for reference to challenge the said decision by the Taxing Officer.

The application was heard by way of written submissions where the applicant had the legal services of Mr. Dickson Sanga, Advocate and the respondent had the legal services under the legal aid of TAWLA.

The applicant's main argument is seen clearly in his affidavit. First, the Taxing Officer taxed instructions fees in item 1 of the bill of costs despite the fact that the respondent never engaged advocate and no evidence was placed before the trial Tribunal to justify the claimed amount.

Second, the applicant contends that the Taxing Officer was wrong when he proceeded to decide the bill of costs which was filed after the lapse of more than eight (8) months from the date of delivery of the impugned decision which was on 18/9/2022. He prayed for the decision of the trial Tribunal to be quashed and set aside. To fortify his points, the learned counsel referred several decisions of this Court which I have taken into consideration.

In response, the respondent submitted that, it is true that the Bill of Cost was filed out of time but the respondent submitted the reasons for delay

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before the trial Taxing Officer and the reasons were accepted so the application could not be dismissed.

On the second point, the respondent submitted that it is not true that she never engaged an advocate she said that she engaged an advocate but the same passed away before the filing of the Bill of Costs. She contended that, the trial Taxing Officer considered the application for Bill of Costs, and the respondent adduced evidence and facts to prove her costs.

She raised an objection that the applicant did not serve the respondent with the Notice of the application as required by the Advocate Remuneration Order, 2015, Order 7(3) and (4), and that neither did the chamber summons of the applicant was stamped by the Registry Officer nor served to the respondent within the required time.

The respondent prayed for this Court to find the Reference incompetent and struck it out with costs.

Having heard the submissions from both parties in support and opposing the application, the pertinent issue for determination is whether this application has merit. *Alles.*

The applicant has based his application for reference to challenge the decision of the Taxing Officer on two grounds.

The first ground is that the application for bill of costs was filed out of time so it was supposed to be dismissed by the Taxing Officer. In determining this, I went through the proceedings of the lower Tribunal. During the hearing of the application for Bill of Cost, the issue of time limit was raised. However, it is clear that, the decree holder (who is now the respondent), filed Misc. Application No. 250 of 2020 before the Tribunal for extension of time to file bill of costs out of time and her prayers were granted. This fact was admitted by the judgment debtor (now the applicant) in his written submission during the hearing of Bill of Cost (Taxation Cause No. 341 of 2021) before the trial Tribunal.

In that stance, the first ground that the bill of costs was filed out of statutory time cannot stand as the respondent sought for an extension of time and it was granted then proceeded with the filing and hearing of the Bill of Costs.

The second ground is that, the costs awarded was huge and without justification. In paragraph 5 of the applicant's affidavit, the applicant

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contends that, Taxing Officer taxed instruction fees in item 1 of the bill of costs despite the fact that that the respondent never engaged advocate, at paragraph 6, the applicant stated, the matter was simple, straight forward and ex-parte, so it did not require much time and a lot of energy in prosecuting it, at paragraphs 7 and 8, the applicant argued that, the Taxing Officer awarded the amount claimed basing on the receipts attached to the submission filed by the respondent, and that there was no justification of awarding huge amount of attendance to the trial Tribunal.

I have read a bill of costs presented before a Taxing Officer. The respondent was claiming for a grand total of Tshs. 5,018,000/=. However, the Taxing Officer axed that bill to Tshs. 2,948,000/= which the applicant has to pay. However, the applicant is still aggrieved by the award for instruction fees to defend the suit and prepare documents by advocate. The respondent claimed Tshs. 1,000,000/= and it was awarded as claimed.

I have read through the proceedings and judgment of a Taxing Officer, and found no proof on how the amount was reached. There was no proof that the respondent engaged a lawyer as the available evidence shows that she have been appearing in person and the written documents has been prepared by her in person.

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Even if the respondent used an advocate to assist her in preparing the necessary documents, there was no any proof to support the claimed amount.

The respondent has averred in her submission that she had engaged an advocate who passed away before the filing of the Bill of Costs. However, I find this to have no any supporting proof. First, the respondent did not even mention the name of the said deceased advocate or the date he/she passed away. Second, the judgment of Application No. 735 of 2018 which is the source of the application for Bill of Costs, reveals that the respondent appeared in person, unrepresented. For those reasons, I hereby tax off Tshs. 1,000,000/= and substitute it for Tshs. 400,000/= which I find reasonable considering that the respondent prepared necessary documents for the application before the trial Tribunal, which being a lay person, needed a legal assistance.

I proceed also to tax off item 3 on the Schedule which the Taxing Officer awarded Tshs. 500,000/= for preparing and drafting advocate counter affidavit. I find the amount huge, and not proved. Since the drafting of document is already awarded at item 1, then the award is hereby vacated.

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I also tax off item 16 which is listed as preparations of documents for bill of cost and legal drafting by advocate to be Tshs. 700,000. Again, the claim was not supported by any receipts or supporting document of proof hence the amount is reduced to Tsh. 400,000/=. The amount for attending Court for hearing and mention which is Items 5,6,8,10,11,12,13,14, and 15 which was taxed to Tshs. 50,000/= each, is hereby reduced to Tshs. 30,000/= each for reason of not being proved anyhow. It is not clear as to how the amount was reached.

It is trite law that the one who claims must prove as stated under section 110 of the Evidence Act, Cap 6, R.E 2019. I am aware that in the Bill of Costs the claims have to be within remuneration scale. However, I believe that, a party has to prove his/her claims of the costs incurred to the satisfaction of the Court before the Court can proceed to award the claimed costs. (See also the case of **Sapi Investment Limited vs. Azid Kaoneka**, Misc. Civil Reference No. 4 of 2019, HC Tanga (unreported)).

In the result, an order of Taxing Officer awarding costs at the tune of Tshs. 2,948,000/= is hereby quashed and set aside and in lieu thereof it is substituted as follows; Item 1 is reduced to the award of Tshs. 400,000/=: Item 2 is awarded to Tshs. 30,000/=: Item 3 is taxed off, Item 4 remain as

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awarded i.e. Tshs. 8,000/=, items 5,6,8,10,11,12,13,14,15 is reduced to Tshs. 30,000/= per each, item 16 is reduced to Tshs. 400,000/=. On the awarded costs of Application for Bill of Costs, item 10 which is taxed in Tshs. 40,000/= and item 12 taxed in 50,000/= remains as awarded. However, Items 11, 13 and 14 is also reduced to Tshs. 30,000/= for the reason of non-proof.

Guided by the above analysis, the whole bill of costs is taxed in at Tshs. 1,288,000/= while a total amount of Tshs. 1,660,000/= is taxed off. The application is allowed to the extent herein above explained. No order as to costs.

It is so ordered.

Dated at Dar es Salaam this 30th day of September 2022.




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A. MSAFIRI
JUDGE