

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

REFERENCE NO. 21 OF 2020

(Arising from Bill of Costs No. 27 of 2019)

**HAMIS ATHUMANI HAMIS.....1ST APPLICANT
JAMES FRANCIS MBATIA.....2ND APPLICANT
ALLY RAMADHANI MOHAMED MAGANA.....3RD APPLICANT**

VERSUS

**MACFARLANE MSECHU.....1ST RESPONDENT
MARYCELINA MSECHU.....2ND RESPONDENT**

Date of Last Order: 15.12.2021
Date of Ruling: 26.01.2022

RULING

V. L. MAKANI, J

This is an application for reference whereby the applicants are asking this court to examine the ruling of the Taxing Master in Bill of Costs No. 27 of 2019 (Hon. C.M. Tengwa, DR) dated 07/09/2020 for the purpose of satisfying as to its correctness, legality or propriety of the said ruling and set the same aside. The applicants are also asking for costs of the application and other reliefs the court may deem fit and just to grant.

The application is made under Order 7(1) and (2) and 48 of the Advocates Remuneration Order, 2015 (the Remuneration Order), and is supported by the affidavit of Nashon Nkungu, Advocate representing the applicants. The application was opposed by the filing of a counter affidavit of Rose Njau, Advocate for the respondents.

The Taxing Master taxed the bill at TZS 1,410,000/= out of TZS 18,111,000/= of the bill of costs that was filed. Being dissatisfied with the amount taxed the applicants have filed this application for reference.

The application was argued by way of written submissions. Mr. Nashon drew and filed submissions on behalf of the applicants. In any case, though Mr. Nashon has said the application is pegged on Order 48 of the Remuneration Order but he gone on to state that he was challenging the wrongly applied principle that led to granting of Items 2 through to 8 by assuming and approving TZS 50,000/= for every item. He said the section for attendance have variety of items and so the flat rate taxed is misconceived. He further said the items are far above the amount taxed so they needed receipts. On the other limb, he submitted that upon taxation of the bill of costs $\frac{1}{6}$ was taxed off

so according to Order 48 of the Remuneration Order the party is not entitled to any costs. He said the court should apply the law as it is mandatory though it may appear unreasonable as it is. He thus prayed for the ruling to be set aside.

On her side Ms. Njau submitted that the Taxing Master was lenient to tax the attendance fees at TZS 50,000/= otherwise she prayed for the amount that they prayed for of TZS 200,000/= per attendance to be considered. She said the issue of quantum remains the discretion of the Taxing Master and so the court on reference is not supposed to interfere. She cited the case of **Thomas James vs. Nyeri Electricity Undertaking [1969] EA 492.**

On the issue that bill of costs shall not be allowed if $\frac{1}{6}$ of the amount has been taxed off, Ms. Njau said the award of costs is the discretion of the Taxing Master as per the case of **Vijay Shantilal Chohan vs. Abdul Shakoor Halday Reference No. 14 of 2019.** She also said that there is nowhere it has been provided that by considering one factor and leaving out the other the Taxing Master would have been regarded as to have not acted judiciously. She said what guided the

Taxing Master was Order 46 of the Remuneration Order. She said this application has no merit and it ought to be dismissed with costs.

No rejoinder was filed by the applicant.

I have gone through the affidavit, counter-affidavit, and submissions by learned Counsel. I must admit that the gist of the submissions by the applicant is not very clear. In any case, the argument by Mr. Nashon on the issue of standard taxing of TZS 50,000/= on items 2-8 on attendance has no merit. The Taxing Master has the discretion to award costs as long as they are not over and above those which have been provided in the Remuneration Order. Attendance is pegged at TZS 50,000/= for 15 minutes and the Taxing Officer found it reasonable to tax the amount at that amount as opposed to the TZS 200,000/= which was billed by the respondents. This amount to me is reasonable and I will not fault it.

The other limb of the argument by Mr. Nashon that the whole amount should be taxed off because $\frac{1}{6}$ of the amount has been taxed off is also without merit. Order 48 of the Remuneration Order states:

"When more than one-sixth of the total amount of a bill of costs exclusive of court fees is disallowed, the party

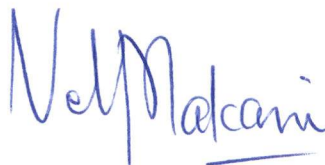
presenting the bill for taxation shall not be entitled to the costs of such taxation:

Provided that, at the discretion of the taxing officer any instruction fee claimed, may be disregarded in, the computation of the amount taxed of that fee in the computation of the one-sixth."

The above provision is pegged with conditions that the total amount of the bill of costs must be exclusive of the court fees and the Taxing Master's discretion is also at issue. Unfortunately, Mr. Nashon did not show the foundation which would result to the disallowing of the amount taxed in terms of the above provision. And as pointed out by Ms. Njau the amount taxed is solely the discretion of the Taxing Master and in my view, it is within the confines of the Remuneration Order. Subsequently, I find no reason to interfere with the decision of the Taxing Master.

For the foregoing reasons, I find the application to have no merit and it is hereby dismissed with costs.

It is so ordered.



V.L. MAKANI
JUDGE
26/01/2022