

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

TAXATION REFERENCE NO.24 OF 2022
(Originating from Bill of Costs No. 145 of 2021)

MISHED CHUNILAL KOTAKAPPLICANT

VERSUS

OMARY SHABANI.....RESPONDENT

R U L I N G

Date of Last Order:30.03.2023
Date of Ruling: 25. 04.2023

T. N. MWENEGOHA, J.

The Applicant brought the Application at hand challenging the award of costs given in favour of the respondent, by Hon. Hamza, Deputy Registrar, vide Bill of Cost No.145 of 2021. The application was brought under **Section 7(1) and (2) of the Advocate Remuneration Order, G.N No. 264 of 2015** and **Section 95 of the Civil Procedure Code, Cap 33 R. E. 2019**. And was supported by an affidavit of Mished Chunilal Kotak, the applicant herein.

Advocate Francis Magare who appeared for the applicant argued in his written submissions that, the impugned decision of Hon. Wanja Hamza is illegal owing to the fact that, she allowed a cost to the tune of 3000,000/= as instruction fees contrary to the 11th Schedule item (k) and m(ii) of the Advocates Remunerations Order of 2015. That, the said costs for instruction fees was not supposed to exceed 1 million as per the law. That, the case

subject to the Bill of Cost was an Application for objection proceedings, vide Misc. No. 617 of 2017. Hence, taxing 3,000,000/= for instruction fees is unreasonable and contrary to the case of **Wambura Chacha versus Samson Chorwa (11973) TLR 55**.

He went to argue that, it was wrong to allow 400,000/= as attendance costs, the same was excessive contrary to the decision of the Court given in **Sianga versus Elias (1970) HCD68**. Either, it was wrong to allow costs for the case (**Bill of Costs No. 145 of 2021**), to the tune of 1000,000/= while it was not asked for. Further, it was argued that, it was wrong to entertain the Bill of Costs while there was a concern on the stay of the said Bill of Costs proceedings, pending the hearing and determination of **Land Case No. 137 of 2021**. Furthermore, the taxing officer failed to analyse and evaluate the arguments of parties no did she gave reasons for her decision.

In reply, Mr. Adinan Chitale for the respondent was of the view that, the taxing officer was right to tax the instruction fee of 3,000,000/=. That, she applied the rules correctly as given under the 11th, items 1(k) and (m) (ii) of G.N No. 263 of 2015. That, she had the discretion to award the amount in question considering the several factors including the importance of the matter. Also, that the taxing officer was right to tax 400000/= as the same is separate from instruction fees.

Having considered the submissions of both parties, for and against the instant application, the issue for determination is whether the application at hand has merits or not.

The borne of contention in this case is on the allegation that, the costs allowed by the taxing officer are excessive and unjustifiable. I have gone

through the records of the impugned decision of Hon. Wanja Hamza. The respondent claimed a total of 8,240,000/= as costs incurred for defending Misc. Land Application No. 617 of 2022, before Hon. Maghimbi. 7,000,000/= alone was a cost claimed as instruction fees. At the end of the case, taxing officer awarded 4,440,000/= as costs to the respondent, hence only a half of what was claimed was allowed by the taxing officer, where instruction fees was taxed at 3,000,000/=.

On this account I find it difficult to agree with the counsel for the applicant on his assertion that, the costs awarded were excessive and unjustifiable. It is well settled that, allowing costs claimed by the decree holder is a discretion of a taxing officer. However, there are considerations to take on board when deciding the amount of costs to be taxed in an application of Bill of Costs including the nature of the case, time taken to prosecute the same and other issue. She applied the rules correctly as given under the **11th, items 1(k) and (m) (ii) of G.N No. 263 of 2015, proviso (aa)** and the case of **Premchand Ranchland Limited and Another versus Quarry Services of East Africa Limited and Others {1972} EA at page 162.**

From what I see from the arguments by the counsel of the applicant, he is reading the provisions of instruction fee of 3,000,000/=, however, she applied the rules correctly as given under the 11th schedule, items 1(k) and (m) (ii) of G.N No. 263 of 2015 in isolation of the proviso above stated. For these reasons I find the decision of a taxing officer to tax instruction fee to the tune of 3,000,000/= is justifiable. So, are the remaining costs for attendance and disbursement, 440,000/=. Further, the costs of the case that was before her (Bill of Costs 145/2021), a total of 1,000,000/=, subject

11th schedule, items 1(k) and (m) (ii) of G.N No. 263 of 2015, as the same was just an application.

It was the applicant's argument that the Taxing officer was wrong to proceed with the Bill of Costs case while there was a concern to stay the same. This issue is also unfounded. The records at hand shows that, the concern so called was well delt with by the Taxing officer as a Ruling to that effect was given on the 30th November, 2021 containing reasons of which are well explained. I find no faults in them.

In the end and for the reasons afore given, I find the application at hand to be devoid of merits. The same is dismissed accordingly with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

25/04/2023