

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

REFERENCE APPLICATION No. 27 OF 2022

*(Arising from the Ruling and Order of the High Court [Hon. Mpaze,
Deputy Registrar] in Bill of Costs No 153 of 2021 dated 6th June 2022)*

BETWEEN

NJOWOKA M.M DEO.....1ST APPLICANT
AMIN ABDULRAHIM PREMJI.....2ND APPLICANT

VERSUS

MOHAMED MUSA OSMAN.....RESPONDENT

RULING

29/03/2023 & 27/04/2023.

L. HEMED, J.

The present Application is in respect to Taxation Cause No. 153 of 2021 whose decision was delivered on 6th day of June, 2022 before Hon. Mpaze-DR. The brief facts leading to this matter is envisaged from the parties' pleadings which can be summarized as follows: The applicants herein instituted against the respondent Misc. Land Application No. 265 of 2021, whereby the said application was withdrawn by them with costs. Following the said withdrawal, the respondent herein commenced a Bill of Costs No. 153 of 2021 claiming reimbursement of the costs incurred in pursuing Misc. Land Application No. 265 of 2021 amounting to Tshs. 5,156,000/= (Five Million One Hundred Fifty-Six Thousand Shillings Only).

Upon hearing, the Taxing Master taxed the bill at a total amount of Tshs 1,910,000/= (One Million Nine Hundred and Ten Thousand Shillings

Only) which comprised of Tshs. 1,000,000/= (One Million Shillings Only) being instruction fees: Tshs. 50,000/= (Fifty Thousand 1 Shillings Only) fees for attendance; Tshs. 60,000/= (Sixty Thousand 1 Shillings Only) for disbursement; being and Tshs. 800,000/= (Eight Hundred Thousand Shillings Only) being fees for prosecuting the bill of costs.

At the conclusion of the matter, the decision was made in favour of the respondent. Dissatisfied with the decision, the applicants preferred this Application seeking for the following orders, that: -

"a) This honourable Court be pleased to revise, quash, and set aside the Ruling and Order of the Taxing Master of the High Court. (sic) [Hon. Mpaze Deputy Registrar] in Bill of costs No. 153 of 2021 dated 6th June, 2022.

b) Costs of this application be in the course;

And.

c) Further and other order (s) as this honourable Court may deem fit to grant."

This Application was conducted by way of written submissions. Mr. Godwin Anthony Fissoo learned advocate, represented the applicants' while the respondent enjoyed the legal services of Mr. Mohamed Musa Osman, learned counsel. Thus, both parties filed their respective submissions as scheduled by this Court.

Mr. Godwin Anthony Fissoo averred that; the taxing master erred to tax the maximum fee of Tshs. 1,000,000/= (One Million Shillings Only) as the instruction fees for the matter contrary to item 1 (m) (ii) of the Advocates Remunerations Order, G.N No. 264 of 2015. According to Mr.

Fissoo, the taxing master failed to consider the circumstance under which the application was withdrawn, and there was formal notice to that effect. He further argued that the application was for extension of time to apply for stay of execution, which needed no serious research. He asserted that grant of Tshs. 1,000,000/= (One Million Shillings Only) would have been proper if the application was determined by the Court. To cement his argument, he cited the case of **Premchand Raichand Ltd and another v. Quarry Services of East Africa Ltd and others** (No. 3) [1972] E.A 162 where the court held that:-

- a) That cost be not allowed to rise to such a level as to confined access to the court to the wealthy*
- b) That a successful litigant out to the fairly reimbursed for the costs he has to incur.*
- c) That the general level of the remuneration must be such as attract recruits to the profession.*
- d) That so far as practicable there should be consistence in the award made."*

Therefore, he stated that the amount of Tshs 1,000,000/= (One Million Shillings Only) is too high. He further prayed the instruction fee be taxed to the tune of Tshs 300,000/= (Three Hundred Thousand Shillings Only). In Regard to the fees for prosecuting the bill of costs taxed at the sum of Tshs 800,000/= (Eight Hundred Thousand Shillings Only) the counsel for the applicants found it to be too high because the applicants written submission was expunged from the Court's record hence, the said bill of cost was not contested. He submitted that, it ought to be taxed at the tune of Tshs. 300,000/= (Three Hundred Thousand Shillings Only). He thus prayed for this Court to revise, quash and set aside the Ruling and

Order of Hon. Mpaze - DR in Bill of Costs No. 153 of 2021 dated 6th day of June, 2022.

Objecting the application, the counsel for the respondent contended that, all the costs awarded by the taxing master were proper due to the fact that the application was opposed. In his opinion the amount of Tsh. 1,000,000/= (One Million Shillings Only) awarded as instruction fees is according to the law. He argued that, the applicants have failed to cite the law that support taxing of Tshs 300,000/= (Three Hundred Thousand Shillings Only) as instruction fees.

He further submitted that the applicants were represented by an advocate who is aware of the law that non-filing of the written submissions tantamount to non- appearance before the Court. He further qualified that, taxing off at the amount of Tshs. 800, 000/= (Eight Hundred Thousand Shillings Only) is according to the law and the amount taxed was not one-sixth of the total amount of the bill of cost as per Order 48 of the Advocates Remuneration Order, 2015. Finally, he prayed for the application to be allowed.

In his rejoinder, the counsel for the applicants reiterated what he submitted in chief. He stressed that, the amount disallowed was far beyond the legal threshold of one sixth of the total claim in the bill of costs which is contrary to Order 48 of the Advocates Remuneration Order, 2015.

Having observed the legal position hereof, now the question is, what is the issue for determination in this instantaneous application? As noted above, this taxation reference challenges the grand total taxed in favor of the respondent. Basically, the applicants are claiming that the taxation is too high. It is a law that the award of instruction fees is peculiarly within the discretion of the taxing officer and the court will always be reluctant

to meddle with it unless the discretion has been exercised injudiciously. In the case cited by the applicants' counsel of **Premchand Raichand** (*supra*) is to the effect that the Court will only meddle with the decision of the taxing officer if the award is so high or so low as to amount to injustice to the other party.

In **Premchand Raichand** (*supra*) The erstwhile Court of Appeal for East Africa laid down four guiding principles which have to be considered when determining the quantum of an instruction fees. So, to speak, the learned advocates for the parties are not in disagreement on the foregoing principles. The issue in controversy is the amount awarded by the taxing master which is alleged to be too high, that is, the instruction fees of Tshs. 1,000, 000/= (One Million Shillings Only), attendance fees Tshs. 50,000/= (Fifty Thousand Shillings Only), disbursement of Tshs. 60.000/= (Sixty Thousand Shillings Only) and fees for A prosecuting the cause Tshs. 800,000/= (Eight Hundred Thousand Shillings Only). I accede to the principle that those powers were judiciously exercised, they should not be meddled with, that the amount taxed is according to the law as articulated under Item 1 (m) (ii) of the Advocate Remunerations Order, G.N No. 264 of 2015.

The argument raised by the applicants that there was a formal notice and the matter was heard *ex parte* does not hold water, because it was the applicants who failed to file submissions in time and there was no any notice in the Court's case file.


Mr. Godwin Anthony Fissoo submitted that, the respondent was awarded 1,910,000/= out of 5,096,000/=, to him that was too high compared to one sixth of the amount claimed. Mr. Mohamed Musa Osman argued that the amount paid is reasonable as far as the instruction fees is concerned. I am aware of the school of thought in **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Reference No. 9 of 2020 (unreported) where the court held that: -

'As argued by the counsel for the parties, it is a general rule that the award of instruction fees is peculiarly within the discretion of a taxing officer and the court will always be reluctant with the decision unless it is proved that the taxing officer exercised his discretion injudiciously''


Applying the facts pertaining to this case, I am at one with the school of thought that so long as the respondent enjoyed the legal service of his attorney, instruction fees have to be taxed. In the matter at hand, the taxing master taxed the instruction fees as per the requirement of the law. As stated in the case above, I am not prepared to vary the findings of the taxing officer.

Having said so, I firmly hold that, the respondent was fairly and reasonably reimbursed for the costs incurred in defending Misc. Land Application No. 265 of 2021. The taxing master exercised his discretion judiciously. Consequently, the application is wanting of merits and it is therefore dismissed without costs. It is so ordered.

Dated at Dar es Salaam 27th day of April, 2023.


L. HEMED
JUDGE

COURT: Ruling is delivered in the presence of the applicants appearing in person and Mr. Tomas Rwebangira advocate for the respondent this 27th April 2023. Right of appeal explained.


L. HEMED
JUDGE