

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
CIVIL REFERENCE NO. 06 OF 2023**

**THE REGISTERED TRUSTEES OF WINNERS
CHAPEL INTERNATIONAL APPLICANT**

VERSUS

MARIA MATHIAS AND 137 OTHERS RESPONDENT

RULING

Date of last Order: 30/6/2023

Date of Ruling: 12/07/2023

A. MSAFIRI, J.

The applicant has instituted this reference under Order 7(1) and (2) of the Advocates Remuneration Order, GN. No. 263 of 2015. The applicant was aggrieved by the decision of the Taxing Master in Bill of Costs No. 115 of 2022, High Court, Land Division, Dar es Salaam by Hon. W.A Hamza, DR.

The brief background of this matter is that, basing on the judgment in Civil Case No. 188 of 2020, the applicant Maria Mathias and 137 others (now the respondents), filed a bill of costs demanding the recovery of the sum of TZS. 146, 410, 000/= being expenses incurred in defending the Land Case No. 188 of 2020 whereas the said case was struck out with costs. *Alle.*

Having heard the submissions from rival parties in the matter, the Taxing Master awarded the applicants TZS. 41,400,000/= being TZS. 300,000 for each applicant as instruction fees.

On part of attendance, the Taxing Master awarded TZS. 50,000/= for each attendance. She also awarded TZS. 120,000/= for payment of Court fee for filing reply to submissions. The grand total was TZS. 54,920,000/=

The then respondent, the Registered Trustee of Winners Chapel International (now the applicant), was aggrieved hence she filed the present reference.

This application for reference is supported by an affidavit deponed by Grace Msuya, an advocate of the applicant.

It is the applicant's prayers that this Honourable Court be pleased to interfere and revise the said decision of the Taxing Master and declare that the bill of costs awarded to the respondent was exorbitantly high beyond the rate set in the Advocates Remuneration Order, 2015, and also that the respondents were not entitled to be awarded costs because one - sixth of the bill of costs was disallowed. The applicant prays further that in alternative, this Court be pleased to reverse the decision of the Taxing *Adls.*

Master and award the respondent the correct bill of costs at the rate of 3% in accordance with the Advocates Remuneration Order.

This reference was vehemently resisted by the respondents through their Joint counter affidavit which was deposed by Emmanuel Richard Machibya, advocate of the respondents.

The hearing of the reference was by way of written submissions where by the applicant was represented by Ms. Aneth Kabairuka, learned advocate.

She submitted that, in Application for Bill of Costs No. 115 of 2022, On part A of the bill, the respondents prayed for Tshs.138,000,000/= being instruction fees. That upon hearing the application, the Taxing Master awarded the respondents the sum of TZS. 41,400,000 being instruction fees, and that is to say that a sum of TZS. 96,000,000/= was taxed off.

Ms. Kabeiruka pointed that, the amount which was taxed off is more than half of the total amount which was stated in the bill. She submitted that, it is clear that the Taxing Master was satisfied that the bill of costs was exorbitantly high hence she was supposed to disallow and dismiss the application in its entirety. *Adle.*

The counsel submitted further that even the said TZS. 41,000,000/= which was awarded exceeded and went far beyond what is provided under the Advocates Remuneration Order because the Taxing Master did not consider the value of piece of land which was in dispute which is TZS. 640 Million. She submitted further that basing on the 9th Schedule of GN. No. 263/2015, the proper and correct fee charged on that amount is 3% of the amount which was TZS. 19,200,000/=.

To cement her points, the counsel cited the case of **George Mbuguzi & another vs. A.S Maskini** (TLR) 53 in which she claimed the Court stated that, in awarding the costs, the Taxing Master has to consider the value of suit in determining the fair and reasonable fee.

She added that, under Order 48 of the Advocates Remuneration Order, GN. Number 263/2015, taxing more than one-sixth (1/6) is disallowed. That basing on that, the respondents were not entitled to the awarded costs. She prayed that this Court reviews and reverse the Taxing Master decision. She concluded by praying that the application be allowed as prayed.

The respondents were represented by Mr. Emmanuel Machibya, advocate. He submitted in opposition of the application that, the value of the subject matter i.e. the suit premises was undervalued by the applicant in Land Case No. 188 of 2020 for current value of 1 sqm is TZS. 30,000/= *Alle*.

and the suit premises is measured at 58 acres equals to 259,700 sqm. That by calculation, the value of the suit premises is TZS. 7,791,000,000 and not TZS. 640,000,000/= as alleged by the applicant.

He argued that the amount taxed by the Taxing Master was reasonable and justifiable, and that she has taxed according to the provision of Order 46 of the Advocates Remuneration G.N. No. 263 of 2015 under column 1 (d) of the 11th Schedule.

He added that, the amount taxed by the Taxing Master has considered that the Land Case No. 155 of 2020 involved multiple defendants who were represented by two advocates who were advocate Emmanuel Machibya, and advocate Daniel Odour. The counsel prayed for the Court to dismiss the application with costs.

In rejoinder, the applicant's counsel reiterated the submission in chief and added that, in regard to the land value, according to the plaint, the value of suit property is TZS. 640,000,000/= but the respondents have come up with a new position that the value is TZS. 7,791,000,000/=. The counsel contended that the counsel for respondents did not say where this new value is found in the pleadings. That, in absence of any proof, the clear value of the suit property is what was stated in the plaint, and the Taxing Master was bound to rely on the said value. *Alle.*

The counsel submitted further that there is no authority supporting the award of costs basing on number of plaintiffs/defendants as the Taxing Master did in the challenged decision by giving each of the respondents, the sum of TZS. 300,000/=

She argued further that, the argument by the respondents that they were awarded the amount because they were represented by two advocates is an afterthought at the submissions. Also, this was not a reasoning of the Taxing Master in her ruling.

The counsel submitted that this Court is empowered to interfere the decision on the award of costs for two reasons; first, that the Taxing Master erred in law to award the costs while the amount taxed off was more than one sixth and secondly, the award of Taxing Master is too high which is meant to punish the application. She reiterated her prayers.

I have gone through the rival submissions made by both counsels for the parties, and I am of the opinion that the major issues for my consideration are first, whether the amount taxed off by the Taxing Master was more the one-sixth contrary to Order 48 of the Advocates Remuneration Order, 2015 and second whether the award of Taxing Master was exorbitantly high. *Alls*

I shall start with the issue as to whether the amount taxed of by the Taxing Master was more than one sixth of the total amount of bill of costs and hence the decree holders were not entitled to the awarded costs as it was contrary to Order 48 of the Advocates Remuneration Order.

As I have already reproduced the facts herein above, initially the Decree holders filed for bill of costs demanding TZS. 138,000,000/= as instruction fees. The Taxing Master awarded them a grand total of TZS. 54,920,000/= of Bill of Costs, TZS. 41,400,000/= being instruction fees. The applicants argued that the awarded TZS. 41,400,000/= was instructions fees after TZS. 96,000,000/= was taxed off which is more than one-sixth of the total amount of bill of costs.

Order 48 of the Advocates Remuneration Order provides that;

"When more than one-sixth of the total amount of 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 fees claimed, may be disregarded in the computation of the amount taxed of that fee in the computation of the one-sixth"

Regarding to the facts at hand, the Decree holders asked for TZS. 138,000,000/= for instruction fees. If the Taxing Master taxed off TZS. *ALLs*

41,400,000/= then it was more than one-sixth of the amount claimed. Having disallowed more than one-sixth of the amount claimed, the Taxing Master was duty bound to take into account the provision of Order 48 of the Advocates Remuneration Order (supra).

Furthermore, I find that even the TZS. 41,400,000/= awarded by the Taxing Master was too high. In her decision, the Taxing Master considered that amount to be reasonable in the circumstances of the case, and find it reasonable to tax the bill at the tune of TZS. 41,400,000/= being TZS. 300,000/= for each applicant.

However, I agree with the counsel for the applicant's submission that it was wrong for the Taxing Master to award TZS. 300,000/= for each respondent as instruction fee, the award was too high considering the fact the Taxing Master did not specify the basis of awarding separate costs to each of the respondents as per the contents of Order 62 of the Advocates Remuneration Order.

I am aware that it is a general rule that the award of instruction fees is peculiarly within the discretion of a Taxing Master and the Court will always be reluctant to interfere with his decision unless it is proved that the Taxing Master exercised his discretion injudiciously or has acted upon a wrong principle or applied a wrong consideration. *Alls.*

This general rule was observed in the Court of Appeal's case of **Tanzania Rent a Car Limited vs. Peter Kimuhu**, Civil Reference No. 9 of 2020. In this case the Court of Appeal also cited with approval its several decisions in which this general principle was articulated. To name few of the said cases, are the cases of **The Attorney General vs. Amos Shavu**, Taxation Reference No. 2 of 2000, (unreported), **The East African Development Bank vs. Blue Line Enterprises**, Civil Reference No. 12 of 2006 (unreported) and **Premchand Raichand Ltd & Another vs. Quarry Services of East Africa Ltd & others** (No.3) (1972) 1 E.A.

As per the general rule hereinabove observed, the Court will interfere with the decision of Taxing Master only where the same has exercised his discretion injudiciously, or acted upon a wrong principle or applied a wrong consideration.

I find the circumstances in the present application necessitate the Court's interference. The reasons for interference are already revealed in the determination of the two issues raised by this Court which are answered in affirmative that, first, the amount taxed of by the Taxing Master was more than one-sixth of the claimed amount in the bill of costs as instruction fees contrary to Order 48 of the Advocates Remuneration *Acts.*

Order and second that, in addition, the award of the Taxing Master was high.

I find that the application has merit and is hereby allowed. The decision of the Taxing Master is quashed and set aside for the reason that it contravened the said Order 48 of the Advocates Remuneration Order.

The Court order further that the respondents are entitled to nothing in their bill of costs on the reason that the disallowed amount is over one-sixth of the claimed amount in the bill of costs.

Each party to bear its own costs. Right of Appeal explained.


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A. MSAFIRI
JUDGE
12/7/2023

