

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

CIVIL REFERENCE NO. 14 OF 2023

(Arising from Taxation Cause No.172 of 2022, A. S. Chugulu, Taxing Officer, dated 10th May, 2023, Originating from Misc. Land Application No.32 of 2022)

EFC TANZANIA MICROFINANCE BANK LTD 1ST APPLICANT

STEAM GENERATION RECOVERIES LIMITED 2ND APPLICANT

VERSUS

OLIVER AMIRI MLOMOLA RESPONDENT

28/6 & 18/7/2023

RULING

A. MSAFIRI, J

In this application, the applicants are seeking for an order that this Court be pleased to quash and set aside the decision of the Taxing Officer (A. S. Chugulu), dated 10th May, 2023, regarding Taxation No.172 of 2022 as she applied wrong principle of law in taxing the bill of costs hence reached into erroneous decision.

The applicants are also praying for an order that Taxation No. 172 of 2022 be quashed, as it contravenes Order 48 of the Advocates Remuneration Order, 2015, G.N. No. 265 of 2015 on the ground that more than one – sixth of the bill of costs claimed was taxed off, hence

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the respondent is not entitled to the costs.

The chamber summons was taken at the instance of Legal Department of the applicants and was supported by the affidavit of Adam Kessy, the Principle Officer of the applicants. The respondent also filed the counter affidavit which was sworn by Oliver Amiri Mlomola, the respondent.

When the application came for hearing, the applicants were represented by Mr. Cleofas James, learned advocate and the respondent enjoyed the service of Mr Raphael Lefi David, learned advocate. The application was heard by way of written submissions.

Arguing in support of the application, the counsel for the applicant submitted that, the Taxing Officer failed to observe Order 48 of the Advocate Remuneration Order, by allowing TZS.1,150,000/= and disallowing Tshs.1,000,000/=, while the total claim by the respondent in the bill of costs was TZS 2,150,000/=.

He submitted that, one - sixth ($1/6$) of the 2,150,000/= is equal to TZS.358,333.3/=.The disallowed amount was stated to be TZS.1,000,000/=, which is above $1/6$ of the total claim.

The counsel referred to Order 48 of the Advocates Remuneration Order and submitted further that even if the court fees which was TZS. 20,000/= is excluded, the amount disallowed is still more than one -

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sixth of the total bill of costs presented by the respondents.

To bolster his arguments, he cited the cases of **Elizabeth Tito & Another vs. Agness Erasto Malungwa**, Civil Reference No.06 of 2022, HCT, (Unreported), at page 6, **Dr David Livingstone Memorial And Bagamoyo Zoological Society Park Limited vs. Didsal Hydrocarbons And Power (Tanzania Pvt) Limited**, Civil Reference No.18 Of 2020, HCT (Unreported) when referring to the case of **The Regional Commissioner of Shinyanga vs. Benard Msonga Sizas'za**, Civil Reference No.01 of 2019 and **Saad Sadiki vs. Efc Tanzania Microfinance Bank Ltd and Two Others**, Reference No.31 of 2022. He prayed that this application be allowed and the ruling and order in Taxation No. 172 of 2022 be set aside.

Replying to the applicants' submissions, the counsel for the respondent cited the case of **Wambura Chacha vs. Samson Chorwa [1972] LRT No.9** and **Premchand Raichand Ltd and Another vs. Quarry Services of East Africa Ltd and Another [1972] EA 162** and referred to Item 1(d) of the eleventh schedule to the Advocates Remuneration Order.

He stated that in the first place the Taxing Officer had rightly awarded TZS 1,000,000/= instruction fee instead of TZS 2,000,000/=. Thus, the award of 1,150,000/= is reasonable, just and fair. He prayed

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for the application to be dismissed with costs.

Having gone through the submissions by both rival parties, the issue for determination is whether the application beforehand is meritorious.

The basis of these arguments emanates from Order 48 of the Advocates Remuneration Order. For easy of reference, I find it proper to reproduce it as hereunder: -

48. 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. (Emphasis added).

It is from the records that the applicants claimed the total of TZS.2, 150,000/= and that, the Taxing Officer allowed TZS.1, 150,000/= and disallowed TZS.1,000,000/=. Regarding the principle on the provision referred above, $\frac{1}{6}$ of TZS.2,150,000/= is equal to TZS.358,333.3/=.

I agree with the Mr. Michael that, the amount of TZS.1,000,000/=

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disallowed by the Taxing Officer exceeds 1/6 of the total bill of costs presented. However, the proviso of Order 48 of the Advocates Remuneration Order provides for the discretion of the Taxing Officer to disregard any instruction fee claimed in the computation of 1/6 of the claimed amount.

The Taxing Officer reasons for allowing Tshs.1,000,000/= as instruction fee out of total of Tshs.2,000,000/= claimed are found at page 6 of impugned ruling. She stated that: -

"The Court record revealed that the matter was dismissed for want of prosecution. In my view, I think that taxing 1,000,000/= will suffice to meet justice on this item of which I do. The rest amount is taxed off. "(emphasis added).

It is from the reasons advanced by the Taxing Officer that the same applied her discretion power by disallowing instruction fee to the tune of Tshs.1,000,000/=.

In the case of **Tanzania Rent a Car Limited vs. Peter Kimuhu, Civil Reference No.9 of 2020**, CAT at DSM (Unreported) the Court held that: -

"As argued by the counsel for the parties, it is a general rule that the award of instruction fees is pecuniary within the discretion of a taxing officer and the court will always be reluctant to

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interfere with the decision unless it is proven that the taxing officer exercised his discretion injudiciously."

Further in the case of **Hotel Travertine Limited vs National Bank of Commerce**, Taxation Civil Reference No.09 of 2006 CAT (unreported), the Court of Appeal stated that: -

"The allowance for instruction fees is a matter of peculiarly in the Taxing Officer's discretion and courts are reluctant to interfere into that discretion unless it has been exercised injudiciously..... it will do so where he has acted upon wrong principles or applied wrong considerations in coming to his decision."

From the above cited authorities, the Taxing Officer had a discretion to either apply the provision of Order 48 of the Remuneration Order or otherwise, and it is not proper for the Court to interfere with the Taxing Officer's decision, since the discretion was exercised judiciously.

Having disregarded the instruction fee in computation of the amount taxed off, and allowing TZS.20,000/= as the court fee, the remaining total amount of TZS.130,000/= which includes court attendance fee does not exceed 1/6 of the total bill of costs.

In the premises, I find this application lacks merits and it is hereby

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dismissed with no orders as to costs.

It is so ordered.

DATED and SIGNED at Dar es Salaam this 18th day of July, 2023


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A. MSAFIRI.
JUDGE