

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

REFERENCE NO. 19 OF 2023

(Originating from Taxation Cause No. 622/2022, Kibaha District Land & Housing Tribunal)

LIDEY KIBONA.....APPLICANT

VERSUS

GODFREY CONRAD MOSHA.....RESPONDENT

RULING

14-17 August, 2023

E.B. LUVANDA, J

In this reference, the Applicant above named is unhappy with the decision of Taxing Officer, which billed a total tax a sum of Tsh 3,302,000 and taxing off a sum of Tsh. 2,890,000. On the chamber summons, the Applicant grounded that: the Taxing Officer decided the taxation cause in total disregard of the laid down legal principles of hearing taxation matter.

Mr. Ndehorio Sindato Ndesamburo learned Counsel for Applicant submitted that it is not an easy task when the court is confronted into deciding on the award of instruction fees, citing **Attorney General vs Amos Shavu**, Taxation Reference No. 2/2000 CAT. He submitted that when the Taxing Officer is considering bill of costs on the issue of instruction fees he must consider the nature of the case, its complexity, the time taken up by the

hearing or arguments, the amount of research involved, citing **Amos Shavu** (supra) and **Premichand Raichand vs Quarry Services of East Africa Ltd** [1992] EA 162; **Hotel Travertine Ltd vs National Bank of Commerce**, Taxation Reference No. 9/2006 CAT; also item 12 of GN 263 of 2015. He also cited **Isabela John vs Silvester Maghembe Cheyo & Others**, Commercial Case No. 49/2003; **Elfazi Nyatega & 3 Others vs Caspian Mining LTD**, Civil Application No. 44/08 of 2017, for a proposition that when the court exercise discretionary powers; must be just and not unjustly. He submitted that the Taxing Officer awarded Tsh 2,500,000/= as instructions fees for handling the application which is contrary to rule 1(m)(i) of the Advocates Remuneration Order, 2015 Cap 341 (sic). He submitted that the Taxing Officer admitted that the application subject for taxation did not take long nor involved calling witnesses. The learned Counsel submitted that since the matter was not of complex nature, did not involve calling witnesses, the amount awarded was too huge, as the law provide in respect of opposed application to be taxed Tsh 1,000,000. The learned Counsel submitted that the Respondent was awarded Tsh 50,000 and 60,000 on item 2,5 and 3, 4 consecutively, which to his opinion is on the higher side, arguing that the Respondent's Counsel office is located at Samora Avenue in which

by uber application charge Tsh 10,000 per trip to Mwananyamala. He proposed for transportation to be awarded Tsh 20,000 per each item total of Tsh 80,000.

Mr. Nafikile Elly Mwamboma learned Counsel for Respondent cited **Noble Motors Limited vs Umoja wa Wakulima wa Bonde la Kisere (UWABOKI)**, Civil Reference No. 29/2019 regarding principles governing application for reference; **Star Media (Tanzania) Limited vs The Tanzania Revenue Authority**, Civil Appeal No. 211/2019, for a proposition that discretionary power of the lower tribunal cannot be interfered by superior court save for some exceptions. The learned Counsel submitted that the amount taxed a sum of Tsh 2,500,000 out of 5,000,000 claimed by the Respondent, was just and not excessive as was minimally arrived, taking into account the time taken in conduct of the application, amount of research, time involved in preparing the case and when dealing with the matter in court. He cited **CRDB Bank Plc vs Starpeco Limited & Gratian B. Nsekanabo**, Taxation Reference No. 14/2022 distinguishing it with the case of **Isabella John** (supra). He submitted that the learned Counsel failed to substantiate which principle was flouted by the Taxing Officer. He submitted that the Taxing Officer exercised his power judiciously, fairly without

infringing any principle. He submitted that the cost paid include the time involved in preparing the case out and when dealing with the matter in court. He cited **Mayers and Another vs Hamilton and Another** [195] E.A 13. He submitted that herein they did initial investment to lay foundation of their application, appear before the court, incurred time for research, drafting and filing. He cited **VIP Engineering and Another vs Citibank Tanzania Limited**, Civil Application No. 24/2019; **Tanzania Rent a Car Ltd vs Peter Kimuhu**, Civil Reference No. 9/2020. He submitted that the award of Tsh 50,000 was based on the time-minutes taken at the tribunal's premises in each session, which the law provides Tsh 50,000 as costs of spending in court for fifteen minutes. He submitted that the issue of Uber fees was not among issues raised at the tribunal. He submitted that even if it could be raised, still not all advocates attend court by using Uber, arguing he does not use Uber rather private cars.

On rejoinder, the learned Counsel for Applicant submitted that the cases cited **Noble Motors** and **Star Media** (supra) are in applicable, for reasons that the former originated from the application for review of a single Justice of Appeal and the later was an appeal from the application for extension of time to file tax appeal. He submitted that the cited case of **CRDB vs**

Starpeco (supra) was not attached, argued it to be disregarded. He submitted that, they did not say the Respondent should not be paid costs, rather the award ought to be reasonable and not on the higher side like in the instant matter.

There is no gain saying that the Respondent Counsel did not dispel a fact that the Taxing Officer ruled that the application subject for the impugned bill did not take long before the tribunal neither involved summoning witnesses. Equally the learned Counsel for Respondent said nothing regarding an argument of the learned Counsel for Applicant that a sum of Tsh 2,500,00 as instruction fees for handling the application was taxed contrary to the provision of item 1(m)(i) to Eleventh Schedule of the Advocates Remuneration Order, 2015. In lieu thereof, the learned Counsel for Respondent ended issuing constructive warning with a lot of safe guards in so far as any attempt to interfere with the award above said is concerned, for what the learned Counsel said by merely thinking the award was too high or low. The learned Counsel for Respondent argued being confident that the Taxing Officer exercised his discretionary judiciously, acted fairly without infringement to any rule, by taking into consideration the amount of research done, investment in laying foundation, work and time involved in preparation

including drafting and filing, dealing with the matter. However, neither of the above were quantified, the Counsel could not tell even time taken and amount of research done, nor stated weight or length of pleadings or submission made.

Rule 41 of the Advocates Remuneration Order, GN 264 of 2015, provide, I quote,

'Bill of costs incurred in contentious proceedings under this part shall be taxable according to the rates prescribed in the Tenth, Eleventh and Twelfth Schedules to this Order'

According to the Eleventh Schedule titled Costs of Proceedings in the High Court, Subordinate Courts and Tribunals, in particular item 1 which is all about instruction fees, provide,

'The fee for instruction in the suit shall be as prescribed in these orders:

(m) For applications, notices of motion or chamber applications (including appeals from taxation)

(i) Un-opposed 500,000/=

(ii) Opposed 1,000,000/='

Therefore, the Taxing Officer award of Tsh 2,500,000 as instruction fees for an application was taxed far beyond the scale provided in the rules above

quoted. Hence, the Taxing Officer award is faulted for reason that the Taxing Officer misdirected for failure to take into consideration the above rule thereby arrived at an erroneous finding or award. In the case of **Noble Motors** (supra) at page 12, the apex Court had this to say,

*'Moreover, in **G.A.B. Swale vs Tanzania Zambia Railway Authority**, Civil Reference No. 5 of 2011 (unreported), the Court restated the principles to be considered in determining an application for reference in the following terms:*

*(i) Only those issues which were raised and considered before the Single Justice may be raised in a reference (see **GEM AND ROCK VENTURES CO.LTD VS. YOMA HAMIS MVUTAH**, Civil Reference No. 1 of 2001 (unreported)*

And if the decision involves the exercise of discretion;

(ii) If the Single Justice has taken into account irrelevant factors or;

(iii) If the Single Justice has failed to take into account relevant matters or;

*(iv) If there is **misapprehension or improper appreciation of the law or facts applicable to that issue** or;*

*(v) If, looked at in relation to the available evidence and law, the decision is plainly wrong'***bold added**

Assuming that the Taxing Officer at its discretion awarded that amount by taking into consideration the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings as envisaged under proviso (aa) in the item 1 quoted above, still the award was on the higher side. This is because, the law above mentioned, provided that even in the circumstances which suggest escalation of work and intricacy involved in handling the matter, only allow an increase of one third of instructions fees, for this matter one third is equal to 333,333.8 which invariably could end at the total sum of 1,333,333.8. No way can instruction fees on an opposed application before the High Court, subordinate courts and tribunal, exceed this amount after an increment of one third, see proviso (bb). Now, considering the plea by the learned Counsel for the Respondent who defended the award on all fours and gear on account of investment in laying foundation, work involved in preparation including drafting and filing, dealing with the matter in the tribunal. In the circumstances, I fault the award of Tsh 2,500,000/= to a less sum of Tsh 1,333,333.8 only as instruction fees.

Regarding award of Tsh 50,000 and Tsh 60,000 for attendance on item 2,5 and 3,4 respectively, the same remain undisturbed. This is because the use

of Uber at the alleged rate of Tsh 10,000 per trip from Samora Avenue to Mwananyamala, was mainly based on the opinion of the learned Counsel for Applicant. The learned Counsel for Applicant did not cite any rule having flouted for the sum taxed.

A reference is partly allowed to the extent depicted above.

The application is partly allowed. No order for costs.

E.B. LUVANDA
JUDGE
17/08/2023



Ruling delivered in the presence of Ms. Irine Mchau Advocate for the Applicant and Mr. Gerald Mosha learned Counsel for the Respondent.

E.B. LUVANDA
JUDGE
17/08/2023



