

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

**AT DAR ES SALAAM**

**REFERENCE APPLICATION NO. 21 OF 2023**

(Originating from Bill of Cost No.61 OF 2020)

**EFC TANZANIA MICROFINANCE BANK LTD**

**(now known as MWANGA HAKIKA BANK)..... 1<sup>ST</sup> APPLICANT**

**MSOLOPA INVESTMENT COMPANY LIMITED ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**PETER ZACHARIA SAMO..... RESPONDENT**

*26<sup>th</sup> & 30<sup>th</sup> June, 2023*

**L.HEMED, J.**

The applicants herein **EFC TANZANIA MFC LTD** now known as **MWANGA HAKIKA BANK** and **MSOLOPA INVESTMENT COMPANY LTD** lost in Land Case No. 08 of 2015 in which costs were awarded to the decree holder one **PETER ZAKARIA SAMO**. Following such triumph, the decree holder who is the respondent in the present application filed a Bill of Costs No. 61 of 2020 claiming a sum of Tshs.21,855,000/=.

The Bill of Costs was determined by Hon. S. H. Simfukwe, DR (as she then was). She ended up awarding a total of Tshs.8,480,000/= (Eight Million Four Hundred and Eighty Thousand Only). Aggrieved by

the award, the applicants filed this application praying for the following orders:-

*"1. That the Honourable Court be pleased to reverse the decision of taxing officer in the Ruling dated 07<sup>th</sup> January 2021 in Bill of Costs No.61 of 2020.*

*2.Any order that this Honourable Court may deem fit and just to grant."*

The chamber summons was taken at the instance of **EFC TANZANIA M.F.C BANK LTD** and supported by the affidavits of **Ahmed Hassan** and **Abdul Azizi Ngumuo**, the principal officers of the applicants. The application was argued by way of written submissions. **Mr. Steven Mayombo**, learned advocate represented the applicants while the respondent argued the application in person.

It was argued by Mr. Mayombo that the Taxing Master failed to observe Order 48 of the Advocates Remuneration Order, GN No. 264 of 2015 by allowing Tshs.8,480,000/= out of Tshs.21,855,000/= of the total claim in the Bill of Costs No. 61 of 2020. He was of the view that, the Taxing Master disallowed the total amount of Tshs.13,375,000/=which is more than one – sixth (1/6). He argued by citing the decision in the case of **Saad Sadiki vs. EFC Tanzania**

**Microfinance Bank Ltd and 2 Others**, Reference No.31 of 2022, that having disallowed more than 1/6 of the total amount claimed the Taxing master ought to have disallowed the whole Bill of Costs.

With regard to the second and final ground, he stated that the taxing master awarded the respondent Tshs.200,000/= per attendance in court on the basis that the respondent spent three (3) hours in court. The counsel for the applicants averred that, it was unjustifiable since no proof was brought to substantiate that the respondent spent the alleged three hours in each attendance. He supported his argument by the decision in the case of **Sapi Investment Limited vs. Azid Kaoneka, Misc. and CIVIL Reference No.4 of 2019** (HC TANGA). He therefore prayed that this application be allowed and Bill of Cost No. 61/2020 be quashed and set aside.

In reply thereof, the respondent submitted that apart from allowing the exclusion of court fees in computation of one – six (1/6), Order 48 of the Remuneration Order, gives power to the Taxing Master to exercise his discretion and exclude the instruction fees in computation of one six (1/6). The respondent argued that, the Taxing Master was correct to award the amount she awarded as one – six could be obtained after deduction of court fees and instruction fees.

Responding to the first ground of reference, the respondent referred to item 2(c) (iii) (a) of the 10<sup>th</sup> schedule of the Remuneration Order that provides for Tshs. 50,000/= in every 15 minutes used by a party in court. He submitted that, it was reasonable for the taxing master to grant Tshs.200,000/= for three hours of attendance since hearing may take even more than three hours in court. To cement his argument, the respondent referred to Order 12(1) of the Remuneration Order that gives discretionary power to the Taxing Officer to allow such cost, charges and expenses.

Having gone through the rival submissions, the issue for determination is whether this application is meritorious. Starting with the ground that the Taxing Master failed to observe order 48 of the Remuneration Order, for easy of reference, I find it apt 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).*

The philosophy behind the provision hereinabove cited is to prohibit exaggeration of costs for purposes of enriching oneself *vide* the case one emerges victor. The records reveals that, the applicant presented the Bill of Costs to the tune of Tshs. 21,855,000/= out of which, only Tshs. 8,480,000/= was taxed and the amount of Tshs.13,375,000/= was taxed off. It is thus obvious that the amount which was taxed off is far and beyond one sixth (1/6) of the total amount claimed. I am of the firm view that, in view of Order 48 of the Advocates Remuneration Order, the Taxing Master ought to have disallowed the Bill of Cost in its entirety. In the case of **Regional Commissioner of Shinyanga vs Bernard Msonga Sizasiza** (Civil Reference No.1 of 2019)[20202] TZHC 1006 (8 May), the court held that: -

*"...the applicants had presented a bill of costs totalling at 30,650,000/= out of which only 720,000 were taxed and the rest taxed off. The disallowed amount is obviously above one-sixth of the total claimed amount in the bill of costs. Having so taxed, the Taxing Master ought to have taken into account the provisions of order 48 above and declare that*

*the respondent (who were the applicants then) are entitled to no costs..”*

In short, I subscribe to the position taken in the above-cited decision. The fact that the amount taxed off in the matter at hand exceeded 1/6 of the total amount claimed, the Taxing Master ought to have taken into account the provisions of order 48 of the Advocates Remuneration Order and declare that the respondent is entitled to no costs. In the premises, the application is allowed with no orders to costs. The ruling of the Taxing Master in Bill of Cost No.61 of 2020 is hereby quashed and set aside. It is ordered.

**DATED at DAR ES SALAAM** this 30<sup>th</sup> day of June, 2023.

  
L. HEMED  
JUDGE

