

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

CIVIL REFERENCE NO. 15 OF 2023

(Arising from the decision in Bill of Costs No. 239 of 2022 by Hon A. Chugulu, Taxing Officer,
dated 15 May 2023)

DEVOTHA DAVID MKWAWA

t/a FIRST SUPERMARKETSAPPLICANT

VERSUS

CLASSIC MALLS LTD.....RESPONDENT

RULING

*Date of last Order: 26/07/2023
Date of Ruling: 7/09/2023*

K. D. MHINA, J.

This reference arises from the decision of the Deputy Registrar sitting as a Taxing Office in Taxation Cause No. 239 of 2022, wherein she taxed the bill at TZS 5,350,000/= in favour of the respondent.

The reference was brought by way of chamber summons made under Order 7 (1) and (2) of the Advocates Remuneration Order, G.N No 264 of 2015. The order being sought is for this Court to;

- i. Call for the record of Bill of Cost No. 239 of 2022 in order to ascertain the correctness of the decision of the Taxing Officer dated 15 May 2023.*
- ii. Costs*
- iii. Any other relief this court may deem fit and just to grant.*

The application is supported by the affidavit of Mr. Charles Lugaila, counsel for the applicant, which expounded the application. In paragraph 6, he raised the following grounds as the basis of the application;

- i. The Taxing Master erred in law by entertaining an incompetent application which was filed contrary to law.*
- ii. The Instruction/advocate fee amount awarded is excessive contrary to the chargeable scale.*
- iii. The attendance fee amount awarded is excessive with no justification as the respondent's counsel office is just 5 minutes from the Court.*

The reference proceeded by way of written submissions. The applicant enjoyed the services of Mr. Charles G. Lugaila, learned Advocate, whereas the respondent enjoyed the services of Ms. Rosalia Ntiruhungwa, also a learned Advocate.

At the hearing, Mr. Lugaila abandoned the third ground and proceeded with the first and second grounds.

In supporting the first ground of the application, he submitted that the application for Bill of Costs was incompetent for violating the mandatory provisions of Order 55(1)(a) and (2) of the Advocates Remuneration Order, 2015 for the following reasons;

First, the order requires the column of dates to be in the following sequence (Year, Month and Days); however, in the Bill of Costs in this matter, the date column was put opposite by starting with Days, Month and Year). He narrated, for instance, Item No. 1, the column of dates was set in the following manner (23/09/2021), contrary to what is provided under the Order.

Second, the two items which were put in part B of the bill of cost (Disbursement), i.e.,

- i. Printing and Photocopying Notice of Preliminary Objection @70,000/=*
- ii. Printing and Photocopying Written Submission by way of Reply to an appeal @100,000/=*

had nothing to do with disbursement because disbursements are fees payable directly to the Court in prosecuting or defending the matter in Court

He further submitted that what was contained in items 2 and 3 of Part A of the Bill of Costs was what ought to have been put under disbursement.

Those items read as follows;

2. Fees for filing Respondent's Notice of Preliminary Objection @ 25,000/=

3. Fees for filling Respondent's Written Submission by way of Reply to an appeal @25,000/=

Though awarded, only item No. 3 ought to have been awarded, and its actual figure is TZS 20,000/=, not TZS 25,000/= as taxed because according to the Court's exchequer receipt under the Court Fees Rules, 2018 GN No. 247 of 2018 the fee is TZS 20,000/= only.

Regarding item No. 2. of Part A, the fee for filing the notice of preliminary objection, the respondent's Advocate prayed to withdraw the same on 28 April 2022 with no order as to costs; therefore, it was wrong for the respondent to claim for any costs related to the Notice of PO which she raised and withdrew.

He concluded by submitting that items 1 and 2 of Part B of the Bill of

Costs were not disbursements. Therefore, putting the items in the disbursement part instead of actual disbursement, which were items 2 and 3 of Part A of the Bill of Costs, was wrong and against Order 55(2) of the GN No. 263 of 2015. Hence, the bill was incompetent.

On the second ground, he argued that the amount of TZS 5,000,000/= awarded as an instruction fee was unreasonable because Land Appeal No. 179 of 2021 emanates from the Ruling and Drawn Order of the District Land and Housing Tribunal for Kinondoni in Land Application No. 868 of 2020 which was an application for extension of time apply to set aside ex-parte Judgment.

He submitted that, according to Item I(m) of the 11th Schedule of the Advocates Remuneration Order, 2015 GN No. 263 of 2015, the instruction fee for such Application is between TZS 500,000/= to 1,000,000/=.

Therefore, he prayed the instruction fee be reduced to the reasonable scale between TZS 500,000/= and TZS 1.000,000/=

In response, Ms. Nturuhungwa submitted that the first ground lacks merits because the applicant failed to express how the omission had prejudiced him. But also, she maintained that Order 55(1)(a) and (2) GN 264

of 2015 were obvious and complied with.

Regarding the second ground, she submitted that the Taxing Master determined the quantum of instruction fees and considered the nature of the case, amount of work involved, time taken from the date of the institution to its judgment, complexity of the case on the subject matter together with the amount claimed in the bill as stipulated in the case of **Attorney General vs Amos Shavu**, Taxation Reference No. 2 of 2000 (Unreported).

Therefore, the Taxing Master exercised her discretion judiciously and did not violate any principle of the law to warrant this court to interfere with her decision; hence, the respondent deserved to be awarded the same amount of Tshs. 5,000,000/= as instruction fees.

She concluded by stating that the cited Order of item I(m) of the 11th Schedule to GN 264 of 2015, regardless of the amount stipulated for instruction fees being TZS 1,000,000 for opposed application, there is a proviso under (aa), which allows the Taxing officer to use his/ her discretion in taxing costs.

In rejoinder, Mr. Lugaila reiterated what he submitted earlier in the submission in chief. He added that the omission had prejudiced the Applicant because the Taxing Master had condemned her to pay costs based on the Incompetent Application.

Regarding the second ground, he submitted that the provision of the 11th Schedule, (aa) Proviso, is misconceived because what is being disputed is the fact that the charging scale for the Advocate fee when it comes to matters involving applications has already been provided for under Item m of the said schedule, to be between (TZS 500,000/= and 1,000,000/=) therefore there was nothing else to consider.

Further, item (aa) Proviso speaks of other allowances, which have nothing to do with the Advocate fee. Therefore, the Taxing Master, while awarding the said TZS 5,000,000/= as an Instruction Fee, had failed to consider the chargeable scale and Item (aa) Proviso of the schedule had nothing to do with her determination.

Having considered the parties' submissions, the issue that has to be resolved is whether or not the bill of costs was contrary to Order 55 (1) (a)

and (2) of GN No. 263 of 2015 and whether the instruction fees were excessively taxed.

In determining the issues, I will start with the first one, which should not detain me long.

First is the applicant's allegation on the arrangement and sequence of the year, month and date of the item(s) prayed to be taxed.

On this, the entry point is the relevant provision of law, i.e., Order 55 (1) (a) of GN No. 263 of 2015. It read that;

55.-(1) Bills of costs shall show the case and title of the name concerned and shall be prepared in five columns, as follows-

- (a) **the first or left-hand column for dates showing year, month and days;***
- (b) the second for the number of items;*
- (c) the third for the particulars of the service charged for;*
the fourth for the professional charges; and (e) the fifth for the taxing officer's deduction. [Emphasis Added].

From above, I have the following observations;

First, it is the requirement that the first left column of the bill shall indicate the year, month and date of the item prayed to be taxed. That is

the general requirement, and that does not mean that starting with the year followed by a month and then a date is mandatory. As long as the applicant in the bill of costs indicates in the left column of the bill the year, month and date of the item he prayed in whatever sequence, then there would be no infringement of the cited law above.

Therefore, starting with a date then followed by a month and then a year, like in this matter, is not contrary to the law. What is important is whether the dates, months and years were proper.

Second, as rightly submitted by Ms. Nturuhungwa, the applicant failed to indicate how she was prejudiced starting with the date, then month and year instead of the same information to be started with the vice versa sequence of starting with a year, month and date.

The ground is not even a technicality that could require this Court to invoke the overriding objective principle. It is baseless.

The second aspect of the first ground is that the items contained under Part B of the Bill of Costs (disbursement) were not disbursement. He faulted the costs for printing and photocopied a notice of preliminary objection written submission by way of reply to an appeal with the total amount of TZS 180,000/=

With respect to the counsel for the applicant, I don't know why he raised this issue. Because the Taxing Officer did not tax that amount. For clarity, I quote what was written at page 5 of the decision;

"On costs of photocopy and printing, which is 180,000/=the same is taxed off for not being substantiated".

Therefore, the ground is misplaced; in this circumstance, there is no need to ascertain the correctness of the Taxing Officer's decision.

From the discussion above, the first ground not only has no merits but also is baseless.

Regarding the second ground, it should also not detain me long. Briefly, the Taxing Officer in taxing TZS. 5,000,000/= as instruction fees, she held that I quote;

"I tax this part under my discretion TZS. 5,000,000 as reasonable amount".

On this, Mr. Lugaila stated that according to Item l(m) of the 11th Schedule of GN No. 263 of 2015, the amount should be between TZS 500,000/= to 1,000,000/=. On the other hand, Ms. Ntiruhungwa stated that the amount was granted after considering the nature of the case, the amount of work involved, time taken from the date of the institution to its judgment, the complexity of the case on the subject matter together with the amount

claimed in the bill.

On this, it should be noted that the bill of cost was a result of Land Appeal No. 139 of 2021.

Therefore, the relevant provision of law regarding the costs for prosecuting or defending an appeal is provided under item L of the 11th schedule of GN No. 263 of 2015. It read;

(l) To present or oppose an appeal in any case not provided for above: As shown above

"What was shown as above" is as per item "J" of the same schedule is that;

"Such sum as the Taxing Officer shall consider reasonable but not more than 1,000,000/=."

From the above, it is clear that the costs of prosecution or defending the appeal should not be more than TZS. 1,000,000/=.

Ms. Ntiruhungwa argued that the Taxing officer, under proviso (aa) of the 11th Schedule, can tax the bill regardless of the amount pegged in the items; therefore, the Taxing Office was right.

On this, the proviso read as follows;

(aa) The Taxing Officer, in the exercise of his discretion, shall take into consideration the other fees and allowances to the advocate (if

any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, and all other relevant circumstances.”

Having gone through that proviso and the 11th schedule, in my opinion, the discretion must be within the amount pegged in the item. For instance, the maximum amount to tax in the prosecution or defending the appeal is TZS 1,000,000/= . Therefore, after taking into account the factors elaborated under the proviso, the Taxing master has the discretion to tax any amount but not exceeding or tax below the amount pegged by the law, i.e., TZS 1,000,000/=

Therefore, the discretion is not unlimited. It must be exercised within the range provided by the law.

Flowing from above, for the foregoing reasons, the instruction fee of TZS 5,000,000/= taxed was contrary to the law. The amount which was supposed to be taxed is TZS. 1,000,000/= maximum.

Consequently, the amount of TZS. 5,350,000/= is hereby reduced by minus the excessive amount, which is contrary to the law, i.e., TZS.

4,000,000/= . Therefore, the remaining and proper amount is TZS.
1,350,000/=

Therefore, in totality, the application succeeds to that extent. The amount taxed is TZS. 1,350,000/= with no orders to costs.

It is so ordered.




K. D. MHINA

JUDGE

07/09/2023