

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
REFERENCE NO. 08 OF 2023**

(Originating from Bill of Costs No. 142 of 2022 and Land Case No. 11 of 2019)

SEIF BAKAR KISINGA..... APPLICANT

VERSUS

ABDULRAHMAN ALLY HAMISI.....RESPONDENT

RULING

9th November, 2023 & 27th November, 2023

L. HEMED, J.

The Applicant herein **SEIF BAKARI KISINGA** is the one who instituted Land Case No. 11 of 2019 against **ABDULRAHMAN ALLY HAMISI**, the Respondent herein and **TEMEKE MUNICIPAL COUNCIL**. He failed to prove his claims and eventually the suit ended up being dismissed with costs.

The Respondent herein filed Bill of Costs No. 142 of 2022 where he claimed a total sum of Tshs. 11,010,000/= as costs which arose out of defending Land Case No. 11 of 2019. Hon. W. Hamza, the Taxing Master,



having scrutinized the matter, awarded Tshs. 6,910,000/= which resulted from the following: -

- i) Instruction fee – Tshs 5,000,000/=
- ii) Attendance costs – Tshs 1,350,000/=
- iii) Disbursement – Tshs 60,000/=
- iv) Costs of the Bill – Tshs 500,000/=

The Applicant herein was aggrieved by the said ruling of the Taxing master hence the instantaneous Reference. In the affidavit of **SEIF BAKARI KISINGA**, especially in paragraphs 4 and 5, the applicant is not happy with the awarded costs of instruction fees of Tshs 5,000,000/= and attendance cost of Tshs 1,350,000/=. In his opinion, the amount awarded is very high.

The reference was argued by way of written submissions. **Mr. Juma Nassoro**, learned advocate acted for the Applicant while the respondent enjoyed the service of one **Mr. Daniel Shao**, learned advocate. All submissions were promptly filed as per the order of this Court.

According to Mr. Nassoro, counsel for the Applicant, the amount awarded as instruction fee of Tshs 5,000,000/= is on high side. He argued that had the taxing officer would have properly evaluated the suit the way it

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was conducted she would have not come up with the decision she made. In his view, the case was not complex as it involved very few issues, few witnesses and did not take longer. He opined that the amount of Tshs 2,000,000/= would be enough in the circumstance instead of Tshs 5,000,000/=.

With regard to attendance costs of Tshs 1,350,000/= he also asserted it to be very high. He was of view that, since the record does not show time spent on trial then costs of attendance should be Tshs 10,000/= per each attendance.

In reply thereto, the counsel for the respondent, Mr. Shao stated that the amount of Tshs 5,000,000/= awarded as instruction fees was not excessive because the taxing officer arrived at that decision after trimming down the amount of Tshs 9,500,000/= which was claimed in the Bill of Costs. The amount of Tshs 5,000,000/= was arrived in exercising the discretion powers of the Taxing Master.

As to the award of Tshs 1,350,000/= costs for attendance in defending Land Case No. 11 of 2019, it was argued that attendance fees is governed by item No. 23(a) of the 8th schedule to the Advocates Remuneration Order,

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2015 where the amount to be charged is Tshs. 50,000/= per attendance. He asserted further that, in defending the case, the respondent appeared in court twenty six times (26) and one time the court accompanied by the parties to visit *locus in quo*. In his opinion the amount taxed of Tshs. 50,000/= per attendance was reasonable. To substantiate his arguments, the counsel for the respondent relied on the decisions in the case of **Amos Njile Lili vs Amana Bank Ltd and Another** Reference Application No. 1/2021; **Delta Africa Limited, vs Vodacom Tanzania Public Limited**, Taxation Reference No. 21/2022; **Asea Brown Bover Ltd vs Barazi Glass Works Ltd and Another**, 2005; and **VIP Engineering & Marketing Limited VS Citibank Tanzania Limited**, Civil Application No. 24 of 2019.

In his rejoinder the counsel for the Applicant reiterated what he asserted in his submissions in chief.

Having gone through the submissions of both parties, the patent question for determination is whether the instant application for reference has merits. In **Asea Brown Boveri Ltd vs Bawazir Glass Works Ltd and Another** [2005] 1 EA 17, it was observed that: -

"...taxation reference would be entertained either on point of law or on the ground that the bill as taxed was



manifestly excessive or inadequate." [Emphasis added]

In the instant matter, the applicant is complaining that the amount of Tshs 5,000,000/= for instruction fees and that of Tshs 1,350,000/= taxed for costs of attending the matter are excessive. According to item 1(d) of the 11th schedule to the Advocates Remuneration Order, GN No. 264 of 2015, where the proceedings are defended or are to defend, the Taxing Officer is obliged to consider reasonable amount which is not less than 1,000,000/=. In assessing the amount of Tshs 9,500,000/= which was claimed as instruction fees, the Taxing Officer using her discretion powers thought reasonable to award Tshs 5,000,000/= as instruction fees to defend the suit. In **Premchand Reichand Ltd and another vs Quarry Services of East Africa Ltd and Others** (No.3) [1972] 1EA 162 the Court had this to say:-

"The taxation of costs is not a mathematical exercise, it is entirely a matter of opinion based on experience. A court will not; therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award was so high or so low as to amount to an injustice to one party or the other."

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In the matter at hand the amount of Tshs 5,000,000/= as instruction fee to defend Land Case No. 11 of 2019, in which the plaintiff was claiming for compensation of Tshs 600,000,000/= is reasonable as it is only 0.0083% or 1/120 of the claimed amount in Land Case No. 11 of 2019. The amount granted for instruction fees is within the threshold prescribed by the law and is reasonable. I find no reason to interfere with the finding of the Taxing master. My option not to interfere with the finding of the Taxing master is based on what the Court of Appeal of Tanzania observed in **Tanzania Rent a Car Limited vs Peter Kimulu**, Civil Reference No. 9 of 2020 that: -

"The award of instruction fees is peculiarly within the discretion of a taxing officer and the court will always be reluctant to interfere with his decision, unless it is proved that the taxing officer exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong consideration."

In the matter at hand, there is no facts stated in the affidavit in support of the Reference or in the submissions of the Applicant that show that the taxing officer exercised her discretion injudiciously or she acted upon a wrong principle or applied wrong consideration. From the foregoing, the

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ground raised to challenge the award of the instruction fees of Tshs 5,000,000/= has no merits. It deserves to fail.

As regard to costs of attending the suit, I have noted that the Taxing officer taxed at Tshs 50,000/= per each attendance. Item No. 23(a) to the 8th schedule of the Advocates Remuneration (supra) requires the Taxing Officer in ordinary cases to charge at Tshs 50,000 per 15 minutes. According to the records related to this matter, it appears there were 33 appearances. The Taxing officer opted to tax at Tshs 1,350,000/= for all the attendances. If at all the Taxing officer would have taxed at Tshs 50,000/= per day attended, it would have been Tshs 50,000 x 33 = 1,650,000/=. However, in her discretion, she awarded Tshs 1,350,000/=. In my firm opinion, the amount taxed for attending the matter is quite reasonable. I find no reason to fault it.

From the foregoing, I find that the amount of Tshs 5,000,000/= and Tshs 1,350,000/= taxed for instruction fees and costs of attending Land Case No. 11 of 2020, respectively, are reasonable, they cannot be interfered. In the upshot, I dismiss the entire reference with costs.

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DATED at DAR ES SALAAM this 27th November, 2023.

