

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
REFERENCE No. 28 OF 2023**

(From Temeke District Land and Housing Tribunal Land Taxation Cause No. 85 of 2022)

**THE REGISTERED TRUSTEES OF PENTECOSTAL HOLINESS
ASSOCIATION MISSION TANZANIA.....APPLICANT
VERSUS
YOSHUA MUYOMBO.....1ST RESPONDENT
JEREMIEA HANGO.....2ND RESPONDENT**

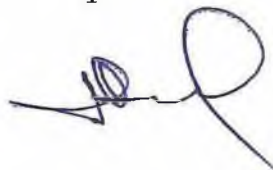
RULING

14th February 2024 & 22nd February, 2024

L. HEMED, J.

This Land Reference emanates from the decision of the Taxing Officer from the District Land and Housing Tribunal for Temeke, in Land Taxation Cause No. 85 of 2022. It has been brought under Order 7(1) and (2) of the Advocates Remuneration Order GN No. 264 of 2015. The applicant is seeking for the following orders: -

- (a) That this Honourable Court may be pleased to examine by way of reference the decision of Hon. P. Chenyele (Taxing Master) of Temeke District Land and Housing Tribunal in Bill of Costs No. 85*



*of 2022 to see its legality and fairness of Taxation
(sic)*

- (b) Cost of the application be in due course.*
- (c) Any other relief(s) this ... court may deem fit and
just to grant."*

The application has been supported by the affidavit of one **ABINEL ZEPHANIAH**. The applicant is challenging the taxed amount of Tshs. 10,960,000/= out of the charged amount of Tshs 11,820,000/=. The applicant's basis of the reference is that, the amount taxed is in the high side, not proved by any piece of evidence and was done in clear violation of the applicable law and general principles governing the taxation of the bill of costs.

The respondents challenged the application through the counter affidavit of **YOSHUA MUYOMBO** and **JEREMIA HANGO**. The same was argued by way of written submissions because all parties were not represented. However, in arguing the Application, the Applicant was assisted by **MR. ABINEL M. ZEPHANIAH**, advocate while the respondents acted in person.

It was the submission of the Applicants that the costs claimed by the respondents in respect of the impugned decision are in appropriate



unjustifiable and unreasonable not intended to fairly reimburse the respondents rather profiting them. According to the learned counsel for the Applicant, the taxing officer acted injudiciously and in clear contravention of the provisions of the law and established principles governing the taxation proceedings. He put reliance on the case of **Wambura Chacha V. Samson Chorwa** (1973) LRT No. 4.

With regard to the instruction fees that was taxed at Tshs. 10,000,000/=, it has been submitted that instruction fees is supposed to compensate adequately an advocate for the work done in preparation and conduct of a case and not to enrich him. In the opinion of the learned counsel, the said amount is not only in higher side but same is inappropriate, unsubstantiated by any fact. He asserted that, according to item 1(m) of the eleven schedule to the Advocates Remuneration Order, 2015, instruction fees ought to have been taxed at Tshs. 1,000,000/= as opposed to the amount of Tshs 10,000,000/= taxed. The decision in the case of **Elizabeth Mohamed v. Adolf John Magesa** (2016) TLR 114 was cited to fortify the argument.

Coming to the attendance fees, it was submitted that the amount of Tshs 10,000/= per each attendance was unreasonable considering that the



taxing officer admitted that the distance from Mwembeladu to Miteja where the Tribunal is located is very short. According to the Applicant the reasonable amount for attendance would be Tshs. 5,000/=.

With regard to the cost of drafting the written statement of defence of Tshs. 300,000/=: it was the submission of the Applicant's advocate that, such amount was unreasonably taxed because drafting of Written Statement of Defence is part of the instruction fees. In his opinion, once an advocate is engaged, the costs of drafting pleadings becomes part of the instruction fees. He added that the respondents failed to prove how they incurred such amount in drafting while they were represented.

In response thereto, the respondents submitted in respect of the instruction fees that the amount of Tshs 10,000,000/= was appropriate because was based on both modes and the scale provided under item 4 of the 09th schedule of the Advocates Remuneration Order, 2015 which provides for instruction fee of 15% basing on the subject matter with the value between Tshs. 15,000,000/= to 30,000,000/= and the discretion of the taxing officer, by looking at the nature of the case. It was the submission of the respondents that in awarding the instruction fees, the Taxing officer considered the complexity of the case, the time taken up at the hearing



including attendances, correspondences, perusal and the consulted authorities or arguments. They supported their arguments with the decision of the Court of Appeal of Tanzania in **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Reference No. 9 of 2020.

The respondents were of the view that in the amended Land Application No. 30 of 2020 the value of the suit land was estimated at Tshs. 25,000,000/= and thus by simple calculation, the 15% of it is equal to Tshs.3,750,000/=. The respondents were of the opinion that the additional instruction fee of Tshs 6,250,000/= in the Taxation Cause No. 85 of 2022 was based on the discretion of the Taxing Officer based on the complexity nature of Land Application No. 30 of 2020.

As regard the attendance fee, the respondents were of the argument that the amount of Tshs 10,000/= awarded per each attendance was very minimal. They relied on item 3 (a) of 8th schedule to the Advocates Remuneration Order, 2015, GN. No. 264 of 2015 which provides for Tshs 50,000/= for every 15 minutes of each attendance.

They finally responded to the award of Tshs 300,000/= for written statement of defence. In their opinion, the amount of Tshs 300,000/=

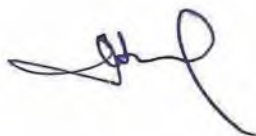


charged for preparing the written statement of defence was reasonable by considering the actual amount of money used to file it to the Tribunal and the additional amount was based on the discretion of the taxing officer.

In the rejoinder submissions, the learned counsel for the Applicant reiterated his submissions in chief. He insisted that the amount charged by the taxing officer was unreasonable.

Having gone through the rival submissions, it is now apt to determine whether the reference has merits. The Applicant's first complaint is on the instruction fees which was charged at Tshs. 10,000,000/=. In **Tanzania Rent a Car Limited vs Peter Kimuhu**, Civil Reference No. 9 of 2020, the Court of Appeal of Tanzania laid down guidance for taxing officers to abide in exercising discretion powers in determining bills of costs. The Court held that: -

*".... the taxing officer has been given wide latitude and discretion to determine taxing costs as it appears to him to be proper for attainment of justice. **However, the said discretion should be exercised within the cost scale prescribed in the Rules.**" [Emphasis added]*



The question is whether in awarding the amount of instruction fee, the taxing officer acted within the threshold stated by the law. At the trial Tribunal the respondents herein were the respondents in Land Application No. 30 of 2020 and the matter ended in their favour after the same being dismissed with costs. Since the respondents were the ones who were defending, then the relevant provision in respect to the instruction fees is the Eleventh (11th) schedule to the Advocates Remuneration Order, GN. No. 264 of 2015 which govern costs of proceedings in the High Court, subordinate courts and tribunals. Item 1(d) is the most relevant as regard to instruction fees where the proceedings are defended or to defend. The said item requires the Taxing officer to consider reasonable amount but should not be less than Tshs 1,000,000/=.

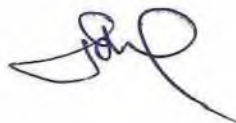
According to the provision afore cited, only the minimum threshold that has been provided. The maximum is left on the discretion powers of the Taxing officer who is expected to exercise it judiciously. I have considered the estimated value of the suit landed property which was stated to be Tshs. 25,000,000/= and the amount of Tshs 10,000,000/= awarded as instructions fee. In my firm opinion such amount was too high. I am holding so because taxation of Bill of Costs is not intended to enrich the litigant/deGREE holder,



rather to reimburse him/her the costs incurred in prosecuting or defending a case. In the instant case the instruction fee awarded exceeded half of the estimated value of the suit property which in my view, I consider it to be unreasonable. Land Application No. 30 of 2020 did not last in the trial Tribunal for more than 24 months, therefore, it cannot be said to have lasted for too long. The instruction fees for the said case would be reasonable if taxed at Tshs 5,000,000/=. The same is thus reduced to Tshs 5,000,000/= as instructions fees to defend Land Application No. 30 of 2020.

The Applicant also complained of the amount of Tshs. 10,000/= charged for each attendance. In the view of the Applicant the amount was on the high side. I have considered item 3(a) of the Eighth schedule to the Advocates Remuneration Order (supra). The said item requires the taxing officer to tax attendance cost at Tshs 50,000/= per 15 minutes of every attendance. In the instant matter the taxing officer charged at Tshs 10,000/= per each attendance. In my view the amount charged was more than being reasonable. The amount awarded cannot be faulted.

The last amount which the Applicant is challenging is that of Tshs 300,000/= awarded for preparing written statement of Defence. I have revisited item 2(a) of the 8th schedule to the Advocates Remuneration Order



(supra) that provides for the fees payable for drawing documents. According to the said item the prescribed fee is Tshs 30,000/=. Therefore, going in line with the scale provided by the law, the fee payable for drawing written statement of defence in Land Application No. 30 of 2020 ought to be Tshs 30,000/= and not Tshs 300,000/=. In that regard, the amount of Tshs 300,000/= awarded for preparing or drawing written statement of Defence is hereby replaced by the amount of Tshs. 30,000/=.

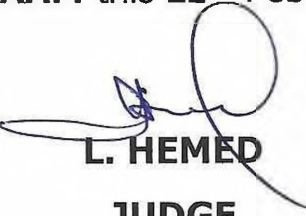
In the final analysis, I find that the application for reference has succeeded to the extent that:

- (i) Instruction fees to be Tshs 5,000,000/= instead of Tshs 10,000,000/=.
- (ii) Costs for drawing or preparing the written statement of defence to be Tshs 30,000/= instead of Tshs 300,000/=.

The other items remain undisturbed as awarded by the Taxing officer. The respondents are thus entitled to be paid the sum of Tshs 5,690,000/=. Each party to bear its own costs. Order accordingly.

DATED at DAR ES SALAAM this 22nd February, 2024.




L. HEMED
JUDGE