

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

REFERENCE NO. 3846 OF 2024

(Arising from Bill of Costs No.48 of 2023)

TANZANIA ROAD HAULAGE (1980) LTD APPLICANT

VERSUS

MOHAMED MASOUD ABDALLAH & 46 OTHERS RESPONDENTS

RULING

20/05/2024 &12/06/2024

GWAE, J

The applicant, Tanzania Road Haulage (1980) LTD, has preferred this application under Rule 7 (1) of the Advocates Remuneration Order, 2015 for the following orders:-

1. That, the Court be pleased to examine the ruling and order of the taxing officer in the taxation Bill of Costs No, 48 of 2023 which was delivered on 22nd December, 2023 for the purpose of satisfying itself as to the correctness, legality or propriety of the said ruling based on the law and principles governing taxation.
2. That, the Court be pleased to reverse, fault, quash, set aside the taxed amount in item the bill of costs No. 48 of 2023 on the grounds that:-

- a) The taxing officer acted injudiciously in her ruling in taxing item 1-19 of the bill of costs without taking into consideration the principles governing assessment of bill of costs.
 - b) The taxing officer applied a wrong consideration in taxing item no. 1 of the bill of costs as presented.
3. That, the costs of this application be provided.
 4. Any other relief that the Court may deem fit to grant

The application has been taken at the instance of the applicant and supported by an affidavit sworn by Henry Lazaro Chaula, the counsel for the applicant. On the other hand, the application is strongly opposed by the respondent through the counter affidavit deponed by Mr. Tazan Keneth Mwaiteleke, the learned counsel for the 1st, 3rd, 9th, 12th, 14th, 19th, 20th, 24th, 29th 33rd, 34th, 37th, 39th, 40th, 41st, 42nd and 43rd respondent.

Hearing of the application proceeded orally. Mr. Joseph Mbogela, the learned advocate represented the applicant whilst Mr. Tazani Mwaitekele, the learned advocate represented for the 1st, 3rd, 9th, 12th, 14th, 19th, 20th, 24th, 29th 33rd, 34th, 37th, 39th, 40th, 41st, 42nd and 43rd respondent. Ms. Suzan Maro appeared for the 5th, 11th, 13th, 16th, 17th, 26th, 27th, 28th, 32nd, 36th and 44th respondents but did not object the application. The rest of the respondents did not enter appearance

despite of having been duly served. Therefore, the matter proceeded *ex-parte* against them.

In support of the application, the counsel for the applicant prayed to adopt the contents of the applicant's affidavit and stated that, the application is pegged in two grounds; **One**, failure to consider the principles governing assessment of bills of costs and; **Two**, the taxing officer wrongly taxed item No. 1.

He went on arguing that, the taxing master wrongly taxed Tshs. 1,000, 000/= per each decree holder. According to him, it is excessive and without any legal basis as no any provision of law governing taxation that was cited. He further submitted that, the scale is only one million shillings for defence, the reasonable amount ought to be Tshs. 5, 000, 000/=. He referred to Item 1 (e) of the 11th schedule of the Order and submitted that, the amount ought not to be below Tshs.1, 000, 000/=.

Regarding the attendance fees, which was taxed at Tshs. 3 million, the counsel for the applicant submitted that, the taxing master did not specifically state the attendance fees as to whether was for advocates or respondents. He urged me to be persuaded by decision in **Abeed Manji vs. Registered Trustees of Daughters of Maria Kipalapala**, Land

Reference No. 01 of 2023 (unreported) to support his argument. He further stated that, neither the respondents nor the applicants did state the time spent in the mere appearance. He quantified that, the taxing master ought to have charged Tsh. 50,000/= per each appearance of the advocate pursuant to Item 3 of the Schedule making a total of Tshs.750,000/= and not 3,000,000/=.

Pertaining the disbursement at the rate of Tshs. 200,000/=:, the applicant's counsel submitted that, photocopies and stationery ought to have been proved with receipt. However, he argued that, the applicant does not contest for the court fees.

In his reply, Mr. Tazani submitted that, the taxing officer ought to have taxed more than what she did. He referred the Court to the case of **NIC Bank (T) Ltd vs Blue Falcon Co. Ltd and 2 Others**, Civil Reference No. 1 of 2020. He stated that, if the court finds that the bills taxed were low, it could justly intervene. He submitted further that, the amount awarded is too small compared to the value of the disputed land. He added that, the case between the parties was the main suit, which was coming for hearing and not application, hence the respondent's counsel must have prepared to prosecute the case against each client since every respondent had his or her plot.

Mr. Tazani submitted further that, though the taxing master did not cite the law as argued by the applicant's advocate but they charged each respondent in his or her personal capacity. He stated that, it also depends on the amount claimed to be the value of 8 Billion. He prayed for Tshs.300, 000, 000/= being bill of costs as per Item 5 of the 9th schedule of the Advocates Remuneration Order to be granted.

Concerning disbursement, he submitted that the amount awarded is reasonable as there were many documents such as witness statements and affidavits.

Regarding the attendance fee, Mr. Tazani submitted that, it was not taxed only for advocates but also for the respondents. He added that, the respondents were also appearing in court as the case for their advocate. He prayed for the instruction fees taxed to be enhanced and other award to remain as taxed by the taxing master. He urged the court to refer the case of **Delta Africa Ltd vs. VODACOM**, (Taxation Reference No. 21 of 2022) [2023] TZHCComD 151 (9 June 2023). Responding to the case of **Abeed Manji** (supra) cited by the applicant's advocate, Mr. Tazani stated that the former case is distinguishable from the present one since the former was about one respondent/defendant

and that, it does not state if the appearance of the party to a proceeding is excludable when he is represented.

In rejoinder submission, Mr. Joseph submitted that, the applicable law is 9th schedule and not 11th schedule. He further insisted that, the case of **Abeed Manji** (supra) is applicable regarding liquidated sum. He added that, the case dismissed for want of appearance is on recovery of land, which does not fall under liquidated schedule. Thus, it is his opinion that, 11th schedule is applicable in the case at hand. Mr. Joseph further argued that, if the respondents were not satisfied with the decision of the taxing master, they ought to have filed reference instead of raising such grievances in the applicant's reference.

I have considered the rival submissions made by learned counsel for the parties. The issue for determination is whether the application is meritorious.

Starting with the impugned instruction fees quantum taxed by the taxing master. It is a general rule 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. The principle has been

consistently restated by our court for instance **Tanzania Rent a Car Limited vs. Peter Kihumu** (Civil Reference No. 9 of 2020), [2021] TZCA 10 (6 April 2021), **Premchand Raichand Ltd and Another vs. Quarry Services of East Africa Ltd and Others** (No.3) [1972] 1E.A 162. **Pardhan v. Osman** (1969) 1 EA 528 and **George Mbuguzi v. A.S Maskini** [1980] TLR 53).

In the matter at hand, the applicant is challenging the amount awarded by the taxing officer as the instruction fees. It was the view of the learned counsel for the applicant that, the award of Tshs.1, 000, 000/= per each decree holder making a total of 17, 000, 000/= is excessive and without any legal basis. He was of the opinion that the reasonable amount ought to be Tshs. 5,000, 000/=pursuant to 11th Schedule to the Rules.

In determining as to whether the taxing master exercised his discretion judiciously or otherwise in taxing the instruction fees, I would be guided by the decision in **Premchand Raichand Ltd and Another** (Supra), which laid down the following four principles which have to be considered when determining the quantum of instruction fee:-

“First, that costs shall not be allowed to rise to such a level as to confine access to the courts to only the wealthy;

Second, that the successful litigant ought to be fairly reimbursed for the costs he reasonably incurred;

Thirdly, the general level of the remuneration of advocates must be such as to attract worthy recruits to an honourable profession; and

Fourth, that there must, so far as practicable, be consistency in the awards made, both to do justice between one person and another and so that a person contemplating litigation can be advised by his advocates very approximately, for the kind of case contemplated, is likely to be his potential liability for costs.” (emphasis supplied)

Guided by the above principles, I am obliged to find whether the taxing master exercised her discretion injudiciously or acted upon a wrong principle or applied a wrong consideration.

Having gone through the impugned decision, specifically at page 4, I have found none suggestive of justifying the court’s intervention in that regard. I am of that view simply because, the taxing master is found to have observed several factors to be considered in taxation. These include, suit amount; nature of the subject matter; its complexity;

time taken for hearing and extent of research involved; parties' general behaviour and facilitation of expeditious disposal of the case, public policy of affordability in litigation and maintenance of consistency in allowable quantum of costs.

After the above consideration, the taxing master found the amount claimed was excessive. It shows that, each defendant was charged 18,000,000/= which for her was unreasonable as the suit was dismissed for want of prosecution. She therefore taxed off 17,000,000/= for each defendant now applicant and awarded 1,000,000/= for each of them, making a total of 17,000,000/=.

Although the taxing officer did not specifically cite any law governing taxation. The award in my view deserves no interference. I am saying so because I am satisfied that, the taxing officer exercised her discretion judiciously in arriving at such amount. Even the counsel for the applicant was unable to establish that, the taxing officer was injudiciously in her ruling, taking into consideration that the amount was trimmed from 18,000,000/= the same was reduced to Tshs. 1,000, 000 /=for each defendant now applicant.

Regarding the claim by the respondent that, the amount awarded was too small compared to the value of the suit land. The court finds

this type of claim to have no basis at juncture. I am of the considered view, as rightly maintained by the applicant's counsel, that, if the respondents were really aggrieved by the quantum so taxed, they would have filed their reference for determination as rightly.

As regards to the attendance fees taxed at 3,000,000/=, I find the taxing master did not state to whom it was granted per appearance. It is not clear whether it was granted to the advocate or the respondents. I am aware of the provision under Item 3 (a) of the 8th Schedule to the Rules which directs the amount of Tshs.50, 000/= to be charged per the appearance of the advocate for 15 minutes. Considering the circumstances of the case, I find taxing 50,000/= per 15 appearance making a total of Tshs.750, 000/= for the advocate is reasonable as correctly submitted by Mr. Mbogela.

Nevertheless, amount chargeable as attendance fees should be allowable for advocates but attendance costs, if any, should cover the disputants who used to attend courts' session notwithstanding that they are represented because they must to have made follow ups of their cases. That, being the case, I am of the view that, 750, 000/=shillings as the attendance fees is reasonable

Regarding the disbursement which was taxed at the tune of 200,000/=, the counsel for the applicant stated that, the photocopies and stationary ought to have been proved by receipts. The counsel for the respondents on the other hand submitted that the amount awarded was reasonable as there were a lot of documents such as witness statements and affidavits. In my view, the expense in the suit was for stationary and related cost were inevitable. Therefore, it my firm opinion, that not always the claim of the claim of disbursement to be proven by receipts as sometimes they are hardly obtainable.

For the foregoing reasons, I allow this reference to the above extent save for the instruction fee. The total of Tshs. 3,000,000/= awarded as attendance fee is reduced 750,000/= for the advocate and disbursement being at Tshs. 100, 000/=Each party shall bear his or her own costs.

It is so ordered.

DATED and DELIVERED at DAR ES SALAAM this 12th day of June, 2024




M. R. GWAE
JUDGE