

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

TAXATION REFERENCE No. 33 OF 2023

*(Arising from Extended Misc. Land Taxation Cause No.29 of 2023 by Taxing Master Hon.
Kisongo Dr delivered on 6th October 2023)*

ASULUMENIE PAKILO MWAITEBELE

(ATTORNEY OF MRS ATUGANILE EMMANUEL

MAUMBA).....APPLICANT

VERSUS

JANETH JOHN LAIZER.....RESPONDENT

RULING

15th December 2023 & 8th February, 2024

L. HEMED, J.

The reference at hand is premised on the **Extended Misc. Land Application No. 29 of 2023**, which was instituted at the Resident Magistrates' Court of Dar es Salaam at Kivukoni/Kinondoni (Extended Jurisdiction) for Taxation of Costs. In the said Bill of Costs, the Respondent **Janeth John Laizer**, who was the Decree holder in Ext. Land Appeal No.68 of 2022 charged the total amount of Tshs 10,670,000/= claimed to be cost she incurred in prosecuting the said appeal. Hon. C. Kisongo, Taxing Officer presided over to determine the said application and ended up awarding the sum of **Tshs.**



3,520,000/=.

The said ruling aggrieved the Applicant herein, **Asulumenie Pakilo Mwaitebele** (Attorney of Mrs. Atuganile Emmanuel Maumba), the Judgment debtor. Thus, by way of Chamber Summons, opted to institute the instant 'Taxation Reference' under Order 7(1) and (2) of the Advocates Remuneration Order, 2015 GN No.263 of 2015, seeking for the followings orders.

"1. This...Court be pleased to call for Record of the Court's file and make reference on the Extended Misc. Land Taxation Cause No.29 of 2023 so as to ascertain the correctness of the decision of the Taxing Master, Hon. Kisongo, DR dated 5th October, 2023.

2. Costs

3. For any other order(s) as this Honorable Court may deem fit and just to grant."

The matter has been supported by the affidavit of one **Ms.Rosalia Ntiruhungwa**, who is the advocate of the Applicant. The Respondent challenged it through the counter affidavit of one **Ms.Janeth Laizer**. On 22nd November 2023, the matter was called for necessary orders. The Court directed the matter to be argued by way of written submissions. The applicant was required to file her submissions in chief



on or before 29th November 2023 and rejoinder if any, by 13th December 2023. The respondent was directed to file her reply submission by 6th December 2023. Parties complied with the order through the service of **Ms. Rosalia Ntiluhungwa**, advocate who acted for the Applicant and **Ms. Gwantwa Kasebele**, advocate for the Respondent.

The Applicant is challenging the Ruling of the Taxing Officer on the following grounds:

- i. The Taxing Master awarded excessive amount for instruction fee contrary to chargeable scale.
- ii. The Taxing Master mistakenly interpreted Order 55(3) of GN 263 of 2015 to rely on Applicant's submissions and awarded 1,000,000/= as high amount for attendances with no clear justification.

As to the 1st ground, it was argued by the Applicant that under paragraph 1(1) of the 11th Schedule to GN No. 264 of 2015, instruction fees for appeal are chargeable at the same scale or lower than the trial proceedings. In her view, the Taxing Master mistakenly awarded Tshs.2, 000,000/= instead of Tshs 1,000,000/= without any justification. She tried to fortify her argument by the decision of this Court sitting at Dar es Salaam in **Bryceson Mwambope vs Simina Ikenda**, Civil



Reference No.17 of 2019, where it was held that court should not make a new case altogether and grant reliefs neither prayed. She ended up praying the instruction fees be reduced to what she referred to be reasonable scale.

With regard to the 2nd ground, she submitted that the reasons for awarding Tshs 450,000/= as cost for attendances, was not sufficiently clear and justifiable on how such amount was reached. She was of the view that transport costs which was not proved during the taxation must be taxed off. She placed reliance on the decision in **Deo Kija v. Bwata Msafiri**, Civil Reference No. 5 of 2020 in which the court taxed off travelling costs due to lack of evidence to prove shift of the Applicant's place of domicile after retirement. She insisted that the attendance costs in both extended Land Appeal No. 68 of 2022 and in Application for Bill of costs was not be proved.

In reply thereto, the counsel for the respondent, contended in respect to the 1st ground that, the amount of Tshs 2,000,000/= awarded as costs for instruction fees was not excessive because the Taxing Officer deducted it from the amount of Tshs 8,000,000/= which was charged in the Bill of Costs. That, in awarding the said amount, the Taxing Master relied on paragraph 1(I) and order 12(1)



of the Advocates Remuneration Order, G.N. 263 of 2015, that allows the taxing officer to allow such costs and expenses as authorized in the said order as long as it is just. She relied on the decision in **Tanzania Rent a Car v Peter Kimuhu**, Civil Reference No. 9 of 2020.

The counsel for the respondent also insisted further that, the taxing officer is also required to consider other factors such as the amount of work involved and the complexity of the case. It was the opinion of the counsel that such factors were considered in the ruling of the taxing officer.

In respect to the 2nd ground, on attendance cost, it was responded that paragraph 23 (a) of the Schedule to the Advocates Remuneration Order (supra), requires attendance fees to be charged at Tshs 50,000/= for every 15 minutes for ordinary cases. It was cemented that there is no need of proof of attendance by receipts. She backed her assertion with the decision in the case of **Catic International Engineering (T) Limited vs Hanspoppe Hotels Limited** (unreported) where attendance costs was taxed without proof of receipts.

Having gone through the submissions of both parties, the issue



for determination is whether the instant application for reference has merits. As aforesaid, the applicant is complaining about the amount of Tshs 2,000,000/= for instruction fees and that of Tshs 450,000/= taxed for costs of attending the matter to be excessive.

I have revisited item 1(d) of the 11th schedule to the Advocates Remuneration Order, GN No. 264 of 2015, it provides for cost of instruction fees where the proceedings are defended. The law requires the Taxing Officer to consider reasonable amount which is not less than Tshs. 1,000,000/=.


In the matter at hand, record shows that the respondent herein had charged the amount of Tshs. 8,000,000/= as instruction fees. However, the Taxing Officer using her discretion powers thought reasonable to award the amount of Tshs 2,000,000/= as instruction fees to defend Ext. Land Appeal No 68 of 2022. It is my firm view that, the Taxing Officer did not contravene any provision of the law in awarding the amount of Tshs. 2,000,000/= as instruction fees. The aforesaid provision only requires the Taxing Officer, when taxing instruction fees to defend proceedings in the High Court, to take into account that the amount taxed is not be less than Tshs.1,000,000/=. In the present matter, the Taxing Officer using her discretion, found it



proper to tax at Tshs. 2,000,000/= out of Tshs. 8,000,000/= as was charged by the Decree Holder. It is my opinion therefore, that the instruction fees awarded by the Taxing Officer was reasonable. I have also warned myself to interfere with discretion power of the Taxing officer as having gone through the record of the matter at hand, I could not find any proof that the Taxing Master exercised her discretion injudiciously or she acted upon wrong principle or applied wrong consideration. I am holding so backed with the principle laid down by the Court of Appeal of Tanzania in **Tanzania Rent a Car Limited vs Peter Kimulu**,*(supra)* 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 is decision, unless it is proved that the taxing officer exercised his discretion injudiciously or has acted upon a wrong principle or applied wrong consideration." (Emphasis added).

From the foregoing, I find no merits in the 1st ground. The Taxing Master exercised her discretion properly in awarding instruction fees. In the circumstance, I find no reason to interfere with



the findings of the Taxing master.

As regard to costs of attending the suit, I have noted that the Taxing officer, taxed it at Tshs 450,000/= as total costs for attendance. The question is whether the Taxing Master acted contrary to the law. Item No. 23(a) to the 8th Schedule of the Advocates Remuneration Order (supra), requires the Taxing Officer, in ordinary cases, to charge at Tshs. 50,000 per every 15 minutes. I have noted from the record related to this matter that, in item 3 which was the cost for attending the matter for mention, the Taxing Officer taxed it at Tshs.50,000/=. In items No.4,5,6 and 7 which were days for hearing and judgment she taxed at Tshs.100,000/= per each day totalling to Tshs 450,000/= for all the attendances. I have scrutinized the amounts taxed for each day of attendance and found that the Taxing Master considered the time spent for each day of attendance. She considered the fact that on the day the matter was called for mention, the matter could not take more than 15 minutes, she was therefore justified to tax it at Tshs.50,000/=.

The Taxing Officer in taxing the cost of attendance on the dates for hearing and judgment, considered the fact that no hearing would have been conducted for 15 minutes or less. Normally, hearing and



judgment takes more than 15 minutes. It was thus justifiable to tax at more than Tshs. 50,000/= . It is my view that the amount of Tshs.100,000/= taxed for each day the matter was called for hearing and judgment was reasonable and cannot be faulted.

From the foregoing, I find no merits in the Application for reference. The amounts of Tshs 2,000,000/= and Tshs 450,000/= taxed for instruction fees and costs of attending Ext. Land Appeal No 68 of 2022, respectively are reasonable. In the upshot, I dismiss the entire reference with costs

DATED at **DAR ES SALAAM** on this 8th February, 2024.

