

TANZANIA / JUDGMENT

20100730 TZCA Dar es Salaam

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TZCADECIDED
30 July 2010

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM CIVIL APPLICATION NO. 182 OF
2008 CRDB BANK LIMITED APPELLANT VERSUS M/S
SERENGETI ROAD SERVICES RESPONDENT

RULING

6 th & 30 th July, 2010 BEFORE: MALEWO, DR-CA (TAXING MASTER) This is a ruling for taxation of a bill of costs filed by Deya Paul Outa, learned Counsel for M/S Serengeti Road Services hereinafter referred to as Respondent/ Decree Holder who emerged successful in a preliminary objection filed by him in Court of Appeal of Tanzania at Dar es Salaam in Civil Application No. 182 of 2008 against CRDB Bank Limited hereinafter referred as applicant/ Judgment Debtor. The controversy arises from the decision of Mackanja, J. in (HC) Civil Appeal No. 14 of 2006 (at Mwanza) handed down on 04/09/2006 which summarily rejected the said appeal. The appeal originated from Civil Case No. 16 of 2005 filed at Musoma Resident Magistrate Court. Dissatisfied, the applicant had unsuccessfully filed an application at the High Court, Mwanza. The applicant tried his luck in the Court of Appeal of Tanzania. He filed an application seeking two orders: extending time to file a notice of appeal out of time and an extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania. The application was struck out on technical ground. The CRDB Bank Limited being condemned in costs. Thereafter learned counsel for the decree holder, Mr. Outa filed a bill of costs totaling shs. 7,454,200/= out of which shs. 4,000,000/= was the instruction fees to oppose the application. Mr. Outa submitted at the taxation that since the matter was of urgency and research was required, so the energy spent justifies payment of Tshs. 4,000,000/=. He submitted further that the matter was based on a point of law and most of the authorities are unreported. He also submitted that the application included interpretation of section 5(1) © of 2 the Appellate Jurisdiction Act. On the other hand, Mr. Zake, learned Counsel for the Judgment debtor said the amount demanded was on the high side. The application was struck out with costs for lack of the drawn order. Can it be said that there was much industry and energy spent? In my view one can not say so. I am fortified in that view by Masanche, J. who in Haji Athumani Issa V. Rwetamwa Mutatu (1992) TLR. 372 held: "... Since the case ended up ex - parte and not much research went into hearing, the award for advocate fees was on the high side" In our bill of costs, the application was struck out for lack of the drawn order. So there was it much work done. So the sum of Tshs. 4,000,000/= as professional charges is far much on the High side. I find the sum of Tshs. 1,000,000/= to be reasonable and I

tax off Tshs. 3,000,000/= and tax the same at Tshs. 1,000,000/= (one million) only . ., .J Item no. 2 (a) and (c), Mr. Outa, learned counsel for the decree holder submitted that since Mr. Zake, learned counsel for the judgment debtor was not disputing that they collected the notice of motion and accompanied affidavit at their own costs, his prayer be granted. Receipt attached are bus ticket dated '24.12.2006 and 30.12.2008. So bus fare item no. 2(a) is granted as presented. Item 2(c) i.e. Taxi charges are taxed off because there is no receipt attached. In item no. 3 shs 18,200/= were demanded as EMS charges and filling fee for counter affidavit. I accordingly grant- those items as presented because receipts are attached. In items 4, shs 80,000/= were claimed as bus fare and shs. 40, 000/= as taxi charges i.e. item 4(a) and (c). item 4 (a) is granted as presented as bus ticket is attached. Item 4(c) i.e. shs 40,000/= receipt attached from 24. 04 2009 to 27 .01 2009 is dated 24. 01. 2009 and the amount paid was Tshs. 15,000/=. I therefore tax off Tshs 25,000/= from item 4(c) and grant Tshs. 15000/= as receipt is attached. 4 Then item no. 5(a) and (c) demanded shs. 120,000/= as bus bare and taxi charges. Item 5(a) is granted as presented as bus tickets to and . from are attached. Item 5(c), receipt attached are dated as follows: 01/02/2009 amount paid 10,000/= 02/02/2009 amount paid 5000/=, 02/02/2009 amount paid 40,000/= and on 03/02/2009 amount paid was 4000/=. So, the total taxi charges comes to shs 23,000/=. So, in item S(c), I taxi off Tshs 17,000/= and grant Tshs 23,000/=. That said, I now move to item no. 6, which relates to the instruction to present bill of costs amounting to Tshs. 1,000,000/=. · Mr. Zake, Learned counsel for the judgment debtor said the amount claimed was on the high side. Mr. Outa, learned counsel for the decree holder submitted that the amount claimed is reasonable as it was the work of 5 or 4 days including travelling costs. If travelling costs were included why item no. 6

(b) (i)? I find the sum of shs· 500,000/= to be reasonable and I tax off shs 500,000/= on item 6(a) and tax the same at Tshs.500,000/=. Item 6 (b)

(i) is granted as presented as receipt is attached. Item· 6 (b) (iii), shs 40,000/= are taxed off and grant only 20,000/= as a receipt dated 10th February, 2010 is of twenty thousand only. 5 Then item no. 7(a) demanded Tshs. 378,000/=. Since Mr. Zake, learned counsel for judgment debtor had no objection, I accordingly grant the same as presented. Item 7 (c) demanded Tshs 60,000/= as taxi charges. Receipts produced is of Tshs. 25,000/=. I tax off Tshs. 35,000/= from item 7(c) and grant Tshs. 25,000/= only. In items No 2(b), S(b), 6(ii) and 7(b) shs. 1,200,000/= are claimed as advocate's perdiem (allowance). Mr. Zake, learned counsel for the judgment debtor submitted that since no receipt attached, the same should be taxed off. Advocate's perdiem/ accommodation, receipt attached are of Tshs. 165,000 only. So shs. 1,035,000/= are taxed off as no receipt attached and grant Tshs. 165,000/= only. The bill of costs will thus stand at Tshs. 2, 926,000/ =. It is so ordered.

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