

TANZANIA / JUDGMENT

CIVIL REFERENCE NO

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30 November 2023

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IN THE HIGH COURT OF TANZANIA MUSOMA DISTRICT REGISTRY AT MUSOMA CIVIL
REFERENCE NO. 427 OF 2024 REFERENCE NO. 20240109000000427 (Arising from Taxation Cause
No. 38 of 2023 in the District Land and Housing Tribunal for Serengeti at Mugurnu, Originated
from Misc Application No. 13 of 2023 at District Land and Housing Tribunal for Serengeti at
Mugumu) ELIZABETH MATINDE..... APPLICANT VERSUS WANGWE DANIEL
MWITA RESPONDENT

RULING

1T & 2^ June, 2024 M. L. KOMBA, J.: This is a reference to this Court from a ruling of a Taxing Officer, Hon. Mayeye S. M. in a Taxation Cause No. 38 of 2023 which was delivered on 30 November, 2023. The application is preferred under Order 7 (1) and (2) of the Advocates Remuneration Order, GN. No. 264 of 2015 by way of Chamber summons accompanied by the affidavit of Elizabeth Matinde who is the applicant. Likewise, the respondent filed counter affidavit. The applicant is moving this Court to review correctness, propriety and legality of the order in Taxation Cause No. 38 of 2023 which was Page 1 of 8 delivered on the stated date where Taxing Officer awarded costs to the tune of Tsh. 1,220,000/ to above named respondent. The applicant was dissatisfied with the decision of Taxing Officer. Thus, the present application seeking to challenge the decision of Taxing Officer and moving the Court to examine its legality and correctness. During the hearing of the application parties consented the application be heard by way of filing written submission and the court so ordered. The filing schedule was set and the applicant was to file written submission in chief on or by 30/05/2024; while the respondent were to file reply of the submission made by 08/06/2024; Rejoinder was to be filed not more than 13/06/2024 and the matter was set for necessary order before ruling. When the application was called on 13/06/2024 both parties were in compliance of filing schedule though respondent was lately served with applicants submission. In her submission, applicant prayed her affidavit be adopted and faulted the taxing master by awarding costs to that amount (One million two hundred and twenty thousand Tanzania shillings) without considering that applicant and respondent are mother and child and the original case, Misc Application No. 13 of 2023 was withdrawn at the earliest stage, the first mention date. Page 2 of 8 It was her further complaint that Taxing master order that amount without legal justification as the matter was withdrawn on the earliest date. She bolstered her submission by Premchand Raichand LTD and Another vs Quarry Services of East Africa LTD and Others, 1972, 1E.A. 162. She further referred section 95 of

the Civil Procedure Code, Cap 33 R.E 2019 that in making orders courts has to focus on making end justice or prevent abuse of the court process. She said, the tribunal was to consider that the matter was called for the first time and there were no costs incurred. It was her further submission that the award by the taxing master was made without evidence which is contrary to section 110 (1) of the Evidence Act, Cap 6 [R.E 2022] which need proof of existence of facts, contrary to what was done by the taxing master as the case was withdrawn and there were no costs incurred. She further complained that taxing master did not consider applicant submission neither made proper analysis and reasoning while referring this court to Bahati Kabuje vs Republic, Criminal Appeal No. 252 of 2014 CAT at Mbeya that failure or improper evaluation of evidence may lead to wrong or biased conclusion resulting into miscarriage of justice. She said, the decision of the Taxing master has no reasoning on why such amount Page 3 of 8 was granted. She prayed this court to set aside the order by the taxing master. On the other side, Mr. Msafiri Henga, counsel for respondent rebut the applicant's submission that respondent had incurred costs as taxed by the Taxing master and referred this court to what was taxed in Misc Application No. 13 of 2023 to legal Opinion, legal fee, reimbursement as well as the attendance of respondent advocate for general conduct of proceedings on 15/04/2023, 20/04/2023 and 26/05/2023 which was taxed as per 8th and 12th schedule of GN. No. 264 of 2015 as it is clear that respondent had an advocate. It was his further submission that costs were further incurred for transportation, meal and accommodation for the advocate and therefore, respondent is entitled to be awarded costs as compensation for expenses incurred and he supported his argument with the East African decision in Premchand Raichand LTD and Another vs Quarry Services of East Africa LTD and Others, 1972, 1E.A. 162 that a successful litigant has to be fairly reimbursed for the costs he has incurred. Counsel submitted that costs are awarded by courts discretions, the exercise which is judiciously done. He said among other things costs is awarded as a bar to parties from filing hopeless cases and applications. Page 4 of 8 He went on submitting on effect of costs as one; weakens the loser part financially and two; put the winning party at his previous financial position as the winning party has to be refunded all the costs incurred during the conduct of the case or application. Citing the decision in Tanzania Rent A Car Limited vs Peter Kimuhu (Civil Reference 9 of

2020) [2021] TZCA 103 (6 April 2021) and Hotel Travertine Limited & Others vs National Bank of Commerce Limited Taxation Civil Reference No. 9 of 2006 CAT at Dar es salaam he submitted that there is no need of proof receipt of EFD or receipt. To him the award of Tsh. 1,220,000/ to respondent was more than fair. On the issue of existing relationship between the two that applicant and the respondent are mother and child he submitted the same is baseless as it is in record that it was the applicant who sued respondent in court. He prayed the application be dismissed with costs for failure to adduce sufficient cause for the orders sought. I am called upon to find correctness and legality on the decision of the taxing Master in Taxation Cause No. 38 of 2023 as cited above. Applicant in making her points relied on section 110 of Cap 6 and the decision in Bahati Kabuje vs Republic (supra). At this early stage I wish to subscribe to the supplied authorities together with Premchand Page 5 of 8 Raichand LTD case (supra) which was cited by both parties. However, it must be

known that application of this nature is also guided by GN. No. 264 of 2015 which provide a wide range of discretion to taxing master, For easy of refence, I will recite what featured in the ruling at page 2 which is the last page of ruling in which part of it reads; 'Kipengeie cha tatu cha ada ya mudhurio katika baraza la Serengeti wakili aliomba Tsh.200,000/=, Baraza Hnatoa Tsh 50,000/= kwasababu mahudhurio haya hayakuzidi dakika 15 maana shauri ia msingi haiikusikiizwa Hliondolewa'. Applicant complain that the amount is excess as the matter was not heard on merit due to the truth that it was withdrawn on the first day. The respondent is silent on whether the matter went to full trial or otherwise. From the above excerpt, it is clear that the matter was not heard on merit. Taxing master indicated that advocate appeared but the hearing did not take longer and he slashed the amount as seen in the quotation. The amount awarded as per taxing master record is for legal opinion and court attendance which was reduced; and legal fee and accommodation was awarded as billed. Taxing master analysed and gave reasons for the amount taxed, this is because respondent had Page 6 of 8 hired legal services even though the matter was not heard on merit. What is the base of the taxed bill is remaining issue for determination as complained at paragraph 5 of the applicant affidavit. Respondent did not dispute that he tendered no receipt during hearing and get refuge to the decision of the Court in Rent A Car Limited vs Peter Kimuhu (supra) that; '.....that in taxation of bill of costs there is no need of proof of instruction fees by presentation of receipts, vouchers and/or remuneration agreement because the taxing officer, among others, is expected to determine the quantum of the said fees in accordance with the cost scales statutorily provided for together with the factors enumerated above.' In the matter at hand, as already indicated above, the taxing officer awarded Tsh 1,000,000/= as instruction fee simply because the respondent was represented by two advocates who were not one of the legal aid or on pro bono basis. The amount taxed is squarely and is at the minimal level as provided at 11th schedule of GN. No. 264 of 2015. The two advocates travelled from Mwanza to Serengeti and therefore they were entitled to one-night per diem to carter for meal and accommodation. The common bill which is claimed at reasonable Page 7 of 8 amount need no receipt to prove. See Hotel Travertine Limited & Others vs National Bank of Commerce Limited Taxation (supra). In her submission the applicant insisted on the existing relationship between the parties, that they are mother and son. That fact might be true as it need further proof but the importance thing to note is that, the law has got no eyes, is applicable to parties who appear in court. Applicant being the mother of the respondent if at all is true, does not alter the truth that respondent hired advocate to provide legal services and therefore that fact has no effect to amount taxed. That being said, I find the application lacks merit as the award by the taxing master in Taxation Cause No. 38 of 2023 which was issued on 30/11/2023 was correct. Respondent is entitled to cost as prayed. DATED at MUSOMA this 26th day of June, 2024. M. L. KOMBA Judge Page 8 of 8

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