

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR-ES-SALAAM SUB-REGISTRY)**

**AT DAR-ES-SALAAM**

**CIVIL REFERENCE NO. 8 OF 2023**

**HUGO VAN LAWICK ..... APPLICANT**

**VERSUS**

**TONY GODLISTEN MWANRI ..... RESPONDENT**

(Arising from the decision of Taxing Master of this Court)

(J. D. Luambano, Taxing Master)

Dated 19<sup>th</sup> day of May 2023

In

Bill of Costs No. 122 of 2021

**RULING**

Date: 28/08/2023 & 28/03/2024

**NKWABI, J.:**

The respondent in this reference, sued the applicant in Civil Case No. 73 of 2017 for a working capital he paid at T.shs 60,000,000/= based on partnership contract for construction of fiberglass fishing boats. Her Ladyship, Masabo, Judge, among other reliefs awarded the respondent a refund of T.shs 60,000,000/=, general damages at T.shs 30,000,000/= for breach of contract and costs.

The respondent lodged a bill of costs in this Court claiming an amount of T.shs 16,590,000/= whereby the instruction fee to sue, the respondent

claimed T.shs 9,200,000/=. The bill of costs was entertained by Luambano, Taxing Master, who taxed the bill at T.shs 7,040,000/=.

Unhappy with the amount taxed, the applicant brought this reference praying for the following orders:

1. That this Honourable Court be pleased to set aside an order or decision made by the Taxing Master on 19<sup>th</sup> May 2023.
2. Costs of the application be provided for.
3. Further orders or relief that this Court shall deem just and necessary to grant.

The summons was served to the counsel of the respondent who had appeared in the main case but has not appeared in this reference. Then the summons was served on the respondent himself, too has not appeared. Then I ordered the reference be heard ex-parte. Subsequent to that order, I ordered the hearing of the reference be conducted through written submission. The counsel for the applicant namely Hillary Hassan, drew and filed the written submission in chief supporting this reference. I thank him for his endeavour in elucidating the points of complaint against the amount taxed.

According to the submissions, there are two lines of grievance. One being that the Taxing Master taxed the bill wrongly based on an inapplicable scale. The second one is failure by the Taxing Master to disallow the whole bill owing to having taxed off more than one sixth of the amount claimed.

I will go with the flow maintained by the counsel for the applicant while submitting on those lines of complaint. I straight forward start with the first one. On this one, Mr. Hassan pointed out that the respondent was awarded T.shs 5,000,000/= as instruction fee. But the Taxing Master wrongly relied on the 9<sup>th</sup> Schedule of the Order because the rule based on applies only on cases with liquidated sums in original and appellate jurisdictions. But the claim in that case was on unliquidated sum thus the amount taxed was excessive. A liquidated amount is a figure readily computed, based on an agreement's term. He added that in this case, parties had never entered in any agreement of the sort for Taxing Master to calculate the instruction fee basing on 9<sup>th</sup> schedule of the Remuneration Order.

The counsel for the applicant derived his views from the 11<sup>th</sup> schedule which, in his stance, ought to be applied by the Taxing Master. Mr. Hassan singled out the case of **Exim Bank (T) Ltd v. M & B Hotel & Tours Ltd**, Reference

No. 20 of 2020, HC. He too referred me to the decision in **Premchand Reinchand Ltd & Another v. Quarry Services of East Africa & Others** [1972] E.A. 162 to the effect that:

*"... costs be not allowed to rise to such a level as to confine access to the courts to the wealthy that a successful litigant ought to fairly."*

He urged that the Taxing Master ought to have taxed the instruction fees at T.shs 1,000,000/= only instead of T.shs 5,000,000/= as provided under paragraph 1 (K) of the 11<sup>th</sup> Schedule to the Remuneration Order.

I have considered the submission of the counsel for the applicant and I am of the firm view that his thinking is flawed. As shown above, the contract between the respondent and the applicant appears to have a term which had a liquidated sum and the respondent duly paid T.shs 60,000,000/= which the applicant was ordered to refund. To convince this Court otherwise, the applicant ought to have attached the contract to the affidavit. Mere words from the bar are unacceptable. See **Elfazi Nyatega & 3 Others v. Caspin Mining Ltd**, Civil Application No. 44/08 of 2017 CAT, (unreported) wherein it was stated that:

*"As to the reason relating to the death of the applicants' advocate, that fact is not contained in their affidavit and cannot therefore, be considered with a view of finding how it contributed to the delay."*

One could also have reference to **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT) where it was ruled that:

*"In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable."*

The first ground of complaint falls down to pieces.

Eventually, I consider the quibble about failure by the Taxing Master to disallow the whole bill on account of having taxed off one sixth of the amount claimed. This is a requirement of law, thus a legal point capable of being raised even at this stage of a reference. The question here is that, is this complaint maintainable?

The counsel for the applicant vibrantly asserted that the respondent claimed a total amount of T.shs 16,590,000/= as costs. The total amount taxed off by the Taxing Master is 9,550,000/= so a total of T.shs 7,040,000/= was taxed in favour of the respondent. That entails more than one sixth of the amount claimed in a bill of costs had been taxed off, observed Mr. Hassan. He stated, under Order 48 of the Advocates Remuneration Order, the whole bill ought to have been disallowed. He parroted to me the case of **Bedhala Co. Ltd v. Petrofuel (T) Ltd**, Commercial Reference No. 51 of 2022, HC where it was stated that:

*"The above provision is louder and clear that where one-sixth of the bill of cost is disallowed, then the party presenting the bill is not entitled to any costs."*

The counsel for the applicant impressed upon me to set aside the ruling and order of the Taxing Master.

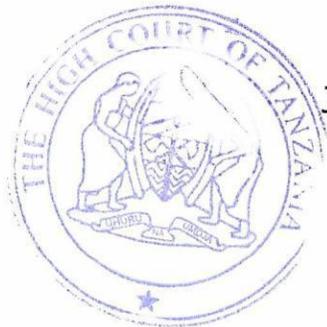
I have closely looked at the submission in conjunction with the amount claimed in total, the amount taxed in favour of the respondent and the amount taxed off, I accept the contention by the counsel for the applicant. The amount taxed off is nearing a half of the total amount claimed or billed by the respondent. The Taxing Master should have invoked the provisions of

Rule 48 of the Advocates Remuneration Order and disallow the bill of costs. Unfortunately, the judgment debtor's counsel did not bring to the attention of the Taxing Master Rule 48 of the Advocates Remuneration Order. I am sure, had that provision been brought to the attention of the Taxing Master, the Taxing Master would have disallowed the bill of costs.

All things equal, I find that this reference is merited and it is granted based on the second complaint. I make no order as to costs as the respondent did not contest this civil reference.

It is so ordered.

**DATED** at **KIGOMA** this 28<sup>th</sup> day of March, 2024.



A handwritten signature in blue ink, appearing to read "Nkwabi".

J. F. NKWABI

**JUDGE**