

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

MISCELLANEOUS COMM. CAUSE NO. 5 OF 2003

IN THE MATTER OF FISHPAK (TANZANIA) LIMITED (UNDER
RECEIVERSHIP)

AND

IN THE MATTER OF THE COMPANIES ORDINANCE CAP. 212

SAVINGS & FINANCE LIMITED.....APPLICANT

VERSUS

S.D.MAGAI – RECEIVER/MANAGER FISHPAK (T) LIMITED
(UNDER RECEIVERSHIP).....1ST RESPONDENT
REGISTRAR OF COMPANIES.....2ND RESPONDENT

R U L I N G

KIMARO, J.

This is a reference which has been filed under the Advocates Remuneration and Taxation of Costs Rules – GN 515 of 1991. The reference has been filed under rules 5(1) and 5(2) of the Rules. The Application has been filed by MS Hamida Hassan Sheikh, Learned Advocate and she is basically objecting to the instruction fees taxed by the Taxing Master. Her observation is that the instruction fees taxed is exorbitant and undeserving in terms of the work which was done. She also says that the amount taxed goes contrary to the rates provided for under the rules.

Mr. James Kabakama, Learned Advocate appearing for the respondent has, in his affidavit, given the facts which has led to the filing of this reference.

The applicant filed Misc. Commercial Cause No.5 of 2003 in which it was petitioning for the compulsory winding up of Fishpak (Tanzania) Ltd (Under Receivership). Pending the determination of the petition, Ms Sheikh filed an application seeking for the following orders against Mr. S.D. Magai –

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- (i) *An order requiring Mr. Magai to submit before the court an up to date Account as Receiver and Manager and the same to be done within a span of seven days.*
- (ii) *An order requiring Mr. S.D. Magai to submit to the court the sum of T.shs 78,932,643.57 being an amount which the applicant was claiming from Fishpak (Tanzania) Limited together with interest and costs.”*

Mr. S.D. Magai was appointed Receiver and Manager under a Debenture which was executed between Fishpak (Tanzania) Ltd and National Bank of Commerce (1997) Ltd.

Unfortunately, the application was determined against the applicant and was dismissed with costs. Consequent to the dismissal of the Application a bill of costs was filed for taxation. The instruction fee raised was T.shs 7,000,000 but it was taxed at T.shs 3,000,000/=. This is the figure which Miss Sheikh is now objecting to. Miss Sheikh has expressed a lot of dissatisfaction on the conduct of Mr. Magai in his role in the receivership of Fishpak (T) Ltd. I consider this portion of submission being irrelevant to this reference because this court has no authority to speak on those grievances. Nor are they relevant in the determination of this application which is now before the court.

In her submissions in support of the application she considered the amount of T.shs 3,000,000/= saying that it was unreasonable and illegally exorbitant. The court was referred to Schedule XI paragraph h of GN 515 and Rule 12 of the same rules and the cases of **C.B.Ndege Vs E.O. Aliya & A.G.** (1988) TLR 91, **Haji Athuman Issa Vs. Rweitama Mutatu** [1992] TLR 372 and **Abdilatifu Salum Vs. Saada Mohamed** [1991] TLR 119.

Ms Sheikh argued further that the application was not complex to justify the instruction fee taxed. She said the application which was involved was a preliminary Interlocutory application and was not a case/suit and costs have to be borne by one of the creditors of the Company to whom the Respondent Decree Holder acted as a Receiver and Manager.

Ms Sheikh also submitted that the amount claimed for appearance is exaggerated and the time shown for mentions is excessive. She concluded that the Taxing Officer should not have allowed full costs because that is contrary to law, practice, fairness equity and natural justice.

A brief reply by Mr. Kabakama for the respondent was that the instruction fee was taxed by the Taxing Master in accordance with the Rules because he stated specifically that the application contained a liquidated amount. He taxed the instruction fee under schedule IX of the rules by taxing then at 3% of the liquidated amount which Miss Sheikh had asked this court to require Mr. Magai to deposit into this court. In doing that exercise, the Taxing Master considered the work done and the time which was involved and taxed the instruction fee at only T.shs 3,000,000/= instead of the T.shs 7,000,000/= which was raised.

Mr. Kabakama submitted further that the Taxing Officer exercised the discretion conferred by rule II of the rules and taxed the bill according to the acceptable principles. The court was referred to the case of **Pardhan vs Osman** [1969] EA 528 where the court was cautioned against interference on the quantum taxed as instruction fee unless the amount is manifestly excessive or low or calls for application of proper principles.

Mr. Kabakama also reminded this court of the higher fees paid in this division of the High Court saying it attracts higher instruction

fees and consequently this should also be a relevant factor for consideration in taxation. The court was requested to dismiss the application with costs.

After going through the ruling of the Taxing Master and the submissions made by the Counsel for both parties, I see no fault in the taxation which was done by the Taxing Master. He stated clearly why he taxed the instruction fee at T.shs 3,000,000/=. The application which came before the court had asked that a specific amount of money be deposited in court. Basing on this prayer, calculation of the instruction fee was done basing on that liquidated amount. This calculation together with payment of higher fees in this division of the High Court, was taken into consideration and using his discretion, the instruction fees was taxed at T.shs 3,000,000/=only. It is not true as contended by Ms Sheikh that the instruction fee was taxed as presented. The instruction fee raised was T.shs 7,000,000/=. An amount of T.shs 4,000,000/= was taxed off. Under such circumstances there is no justification for faulting the decision of the Taxing Master. There was no misdirection. I do not accept the argument by Miss Sheikh that because it was only an application which was before the court, there was no complexity. With respect, I reject the argument. The written submissions filed suggest that a lot of time was spent on research and putting things in the format in which it was presented in court. Even the fees charged for appearance is reasonable under the circumstances. I appreciate the cases which have been referred to this court by Ms Sheikh but with respect, they do not appear to be of assistance in the circumstances of this case.

With the observation made, I dismiss the application with costs.

N.P.KIMARO,

JUDGE

03/03/2005

Date: 9.3.2005

Coram: Hon. N.P.Kimaro, Judge.

For the Applicant – Mr. Mujulis/Miss Shekh.

For the 1st Respondent } Mr. Mujulis

For the 2nd Respondent }

CC: R. Mtey.

Court: Ruling delivered today.

Order: The application is dismissed with costs.

N.P.KIMARO,

JUDGE

9/03/2005

1,550 -words

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I Certify that this is a true and correct
of the original order Judgement Rulling
Sign Mr. N.P. Kimaro
Registrar Commercial Court, Dsm.
Date 9/3/05