

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**TAXATION REFERENCE NO.13 OF 2023**

(Originating from Taxation Cause No. 54 of 2023)

**BETWEEN**

**KCB BANK TANZANIA LIMITED.....1<sup>ST</sup> APPLICANT**

**KCB BANK KENYA LIMITED.....2<sup>ND</sup> APPLICANT**

**AND**

**KILIMANJARO OIL COMPANY LIMITED.....RESPONDENT**

**RULING**

**Date of Last Order: 09/02/2024**

**Date of Ruling: 17/04/2024**

**GONZI, J.**

In the Chamber Summons, the Applicant prayed for Orders that:

- 1. This Honourable Court be pleased to reverse the Ruling of the Taxing Master Hon. Minde, DR. dated 20<sup>th</sup> July 2023 on the reasons and grounds that:**
  - (i) The Taxing Officer had no jurisdiction to entertain the Taxation Cause on account of pending notice of appeal filed to challenge the decision of the High Court inclusive of the costs awarded by the Court.**

**(ii) The Taxing Officer decided the Taxation Cause in total disregard of the laid down legal principles guiding hearing of Taxation matter.**

**2. Costs of this application be provided for.**

**3. Any and further reliefs the Hon. Court shall deem just and fit to grant.**

From the affidavit of the applicants deponed by Irene Mchau, learned advocate for the applicants and the counter affidavit by the Respondent deponed by Frank Mwalongo, learned advocate for the Respondent, the following facts constitute the background to the present application. The applicants were sued by the Respondent as the defendants in Commercial Case No.07 of 2022 and on 18<sup>th</sup> April 2013 this Court (Hon. Nangela, J.) delivered Judgment and Decree in favour of Respondents whereby a counter claim by the Applicants which was embedded in Commercial Case No. 07/2022 was dismissed. The Respondents lodged a Notice of appeal to the Court of Appeal challenging the Judgment and Decree while the Respondents instituted Bill of Costs in Taxation Cause No.54/2023 claiming for Instruction Fees of Tshs. 286,756,5222.8 and Disbursements at Tshs 5,790,000/= which made the total Bill of Costs presented in Court to be Tshs. 292,546,522.8.

After hearing the taxation proceedings, on 20<sup>th</sup> July 2023 the Taxing Officer awarded the Respondent Tshs. 32,050,000/= and Tshs. 260,496,522 was taxed off.

The Applicants have filed the present reference challenging the decision of the Taxing Officer while the Respondent is in full support of the decision of the Taxing Officer. The hearing of the Application was ordered to proceed by way of written submissions. The Applicants were represented by Ms. Elisa Abel Msuya, learned Advocate while the Respondent was represented by Ms. Halima Semanda, learned Advocate. I thank both counsel for their useful submissions filed timely.

The Applicant's counsel submitted that the application at hand has been brought under Order 7(1) and (2) of the Advocates Remuneration Order of 2015 GN.No.263 of 2015. The learned counsel submitted that there are two grounds of attack to the decision of the Taxing Officer. The first ground is that the Taxing officer had no jurisdiction to entertain (hear) the Taxation Cause No.34 of 2023 on account of pending Notice of Appeal filed to challenge the decision of the High Court inclusive of the order of costs. The second ground is that the Taxing Officer decided the Taxation Cause in total disregard of the laid down legal principles guiding hearing of Taxation

matter. With regard to the 1<sup>st</sup> ground, the learned advocate for the Applicants submitted that at the High Court level there are two schools of thought on the jurisdiction of the High Court Taxing Officer to proceed with Taxation of Costs in the event of a Notice of Appeal being filed in the Court of Appeal. She submitted that the first school holds that once a notice of appeal is lodged, the High Court ceases to have jurisdiction to entertain an application for taxation of costs. This school is supported by a chain of decisions of the High Court including the case of **Norman Mehboub t/a Norman AlMehboub General Trading Corporation versus Milcafe Limited**, Commercial Case No.41/2003. The second school of thought is the one that holds that despite the lodging of the Notice of Appeal in the Court of Appeal, the High Court Taxing Officer still retains the power to proceed with taxation of costs. She submitted that the school is supported by a chain of decisions including **Rose Mkeku (as administratrix of Estate of the late Simon Mkeku) vs Pervez Shabbirdin**, Misc. Civil Application Cause No.89 of 2021. She argued that in the present application, this court be persuaded to follow the first school of thought and hold that once a notice of appeal is lodged the Taxing Officer ceased to have jurisdiction to handle the Taxation of costs cause. She rested her argument on the authority of the decision of the Court of Appeal in **Matsushita Electric Co. (E.A.) Limited**

**versus Charles George t/a C. G. Traders**, Civil Application No.71 of 2001 decided by the Court of appeal of Tanzania, at Dar es Salaam. The Court of Appeal held at page 4 of the Ruling that:

**“I am of the considered opinion that once a notice of appeal is filed under Rule 76, then this Court is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as leave to appeal, provision of a certificate of point of law or execution where there is no order of stay of execution from this court”.**

She argued that the same position was followed in the case **of Aero Helicopter (T) Limited versus F.N Jensen** (1990) TLR 142.

The applicant’s counsel submitted that when the Court of Appeal hears the appeal against the decision of the High Court and reverses the decision, that order of the Court of Appeal will have the effect of reversing everything inclusive of the order of award of costs. In that situation it will be very cumbersome for winner of the appeal to apply to the High Court for reversal of the decision of the High Court on costs as it might have been enforced already. She argued that even the time to apply for remedies might have

elapsed and thus necessitating the winner of the appeal to make a chain of applications that will result into multiplicity of proceedings.

On the second ground of reference, the learned counsel for the Applicant submitted that the award of Tshs. 25,000,000/= as instruction fees is by all standards on the higher side given the nature of the matter. She submitted that hearing of the entire case took only 4 days namely 4<sup>th</sup> October 2022, 5<sup>th</sup> October 2022, 6<sup>th</sup> October 2022 and 16<sup>th</sup> October 2022 and not 17 months as held by the Taxing Officer in her Ruling.

The Applicant submitted that under page 5 of her decision, the Taxing Officer held that the suit was for declaratory Orders and hence disappplied the ninth Schedule to the Advocates Remuneration Order and awarded the costs on the basis of Item 1(k) of the Eleventh Schedule. The complaint by the Applicant's counsel is that the Taxing Officer having held that the matter fell under Item 1(k) of the Eleventh Schedule to the Advocates Remuneration Order, proceeded to award Instruction Fees of Tshs. 25,000,000/= while the maximum amount taxable under it should have been Tshs. 2,500,000/=.

The Applicant's counsel argued that the other misapplication of law is seen in respect of the award of Tshs. 50,000/= for items 5,8,10,11,14,18,23,27,37,38,39 and 40 of the Bill of Costs which were taxed

in accordance with the Eighth Schedule to the Advocates Remuneration Order while the Eighth Schedule is reserved for fees in respect of business remuneration which are not otherwise provided or attendance in ordinary cases per 15 minutes or part thereof. She argued that the amounts are taxed based on the distance from the Court and that in this case the offices of the Decree holders are at TANCOAT house which is a walking distance to court premises.

The last complaint was with respect to the award of Tshs. 150,000/= for items 30,31 and 23 which amount was even higher than the Tshs. 100,000/= claimed by the Respondent in the Bill of Costs.

The learned Counsel for the Applicants concluded her submissions by praying that this Honourable Court be pleased to set aside the order of the Taxing Master with instructions that taxation of costs be stayed to await the determination of the Appeal lodged in the Court of Appeal or vary it to cure the defects shown.

In reply submissions, the learned counsel for the Respondent submitted in respect of the first ground that the Applicant's counsel has misinterpreted the position of the law regarding the two conflicting schools of thought on competency of the court to proceed with hearing the Taxation of costs where

there is a pending appeal against the decision of the High court. She argued that the current position is that the High Court is not barred from proceeding with taxation of costs proceedings even after the judgment debtor files a notice of appeal. The Respondent's counsel cited a chain of authorities to this effect including the case of **KCB Tanzania Limited and another versus Deline General Enterprises Limited** (Commercial Reference No.24 of 2023) decided by this Court and the case of **Rose Mkeku versus Pervez Shabbirdin (supra)** where this Court held that:

**"The decision of Matsushita Electric Co.Ltd does not bar a decree holder to file and prosecute a bill of costs. The bill of costs are proceedings which by their nature are instituted after the judgment or ruling is pronounced. Failure to file the bill of costs within 60 days renders it time barred. I will add that after the bill of costs is taxed, the decree holder may go ahead and enforce the award unless the Court of appeal stays the execution of the decree of this court".**



The Respondent's counsel argued that the above being the most recent decision, ought to be followed in preference to the conflicting decisions cited by the Applicant's counsel.

On the second ground, the Respondent's counsel submitted that the Commercial Case No. 07/2022 was instituted in Court on 27<sup>th</sup> January 2022 and by way of plaint seeking for declaratory orders against the applicants herein and the cases involved 7 issues which were framed and took 15 months to completion. The case was a complex one that involved 4 witnesses and 19 exhibits were tendered. Therefore, she argued that the case was not concluded in 4 days rather it took 15 months while the normal life span of a commercial case under Rule 32 of the Commercial Court Rules, is 10 months.

Regarding the instruction fees being on the higher side, the learned counsel for the Respondent submitted that the instruction fees should be commensurate with the efforts and work done and is measured based on complexity of the case and the amount of research involved. She cited the cases **of Anthony Ngoo and another and Kitinda Kimaro** (Civil Appeal No.25 of 2014) decided by the Court of Appeal and the High Court decision in the case of **Junior Construction Company Limited and 2 Others versus Mantrac Tanzania Limited** as her authority for this. She reasoned

that the Taxing Officer at page 5 stated that the Tshs.25 million was awarded due to the complexity of the case which consumed more time and that it involved many witnesses and exhibits. Therefore, she argued, the decision of the Taxing Officer was correct.

Regarding the award of Tsh. 50,000/=, the Respondent's counsel submitted that under Item 3(a) of the 8<sup>th</sup> Schedule to the Advocates Remuneration Order, court attendance of every 15 minutes is chargeable at Tshs. 50,000/- . She reasoned that attending the court for hearing the case reasonable could not have taken lesser than 15 minutes and therefore the award of tshs. 100,000/= was reasonable as parties spent more than 15 minutes each time they attended the court.

The Respondent's counsel prayed that the court finds that the Taxing officer had jurisdiction and that the amounts awarded were reasonable.

By way of rejoinder, the Applicant's counsel reiterated her submissions that the court lacked jurisdiction to entertain bill of costs application while there was a pending appeal in respect of the decision of the High Court. He submitted that the rule of following the latest decision in case of conflicting decisions applies only in the Court of Appeal and not to this court. She relied on **Ardhi University versus Kondo Enterprises (T) Limited**, Civil Appeal

No. 58/2018. Further, she argued that the court shall not be obliged to follow its latest decision where the same is per incuriam. She cited the case of **Arcopar (O.M) S.A vs Herbert Marwa and Family & 3 Others**, Civil Application No.94 of 2013 as her authority for that argument. The learned counsel reiterated her submissions in respect of the 2<sup>nd</sup> ground of reference.

After hearing the rival submissions of the learned counsel for the Applicant and the Respondent I now proceed to determine the two grounds of reference advanced in the chamber summons and the submissions by the learned counsel. In the first issue, the Applicants' Counsel is in essence inviting me to subscribe to the position that once a notice of appeal has been filed in the court of appeal, this court lacks jurisdiction to entertain an application for bill of costs. On the other hand, the Respondent's counsel has persuaded me to follow the opposite school of thought. As the authorities relied upon by both counsel are of this very court, I am free to choose and abide with one school of thought in preference to the other. Without much ado, I subscribe to the holding in **Rose Mkeku versus Pervez Shabbirdin (supra)** where this Court held that:

**"The decision of Matsushita Electric Co. Ltd does not bar a decree holder to file and prosecute a bill of costs. The bill of costs are proceedings which by their**

**nature are instituted after the judgment or ruling is pronounced. Failure to file the bill of costs within 60 days renders it time barred. I will add that after the bill of costs is taxed, the decree holder may go ahead and enforce the award unless the Court of appeal stays the execution of the decree of this court”.**

I subscribe to this school of thought because it is more appealing in that the decision of the Court of Appeal of Tanzania in Matsushita’s case left some avenues for some proceedings incidental to the judgment and decree appealed against to proceed. The Matsushita’s case allowed “applications such as leave to appeal, provision of a certificate of point of law or execution where there is no order of stay of execution.” From the wording of the above quoted provision, it is clear that the incidental proceedings allowed to proceed in the High Court during the pendency of the appeal in the Court of appeal are ones which are not likely to vary the substance of the judgment and decree appealed against. And the logic behind is not far to see that if the Court of Appeal were determining an appeal from the decision of this court and at the same time this court were to proceed with further proceedings in respect of the same judgment and decree appealed against and possibly make subsequent orders which would have the effect of varying the judgment and decree already appealed against, there would be no

finality of appeals relating to the same judgment and decree. There would be a danger of the subsequent order of this court giving rise to another ground of appeal which was not borne out of the original judgment and decree or which could pre-empt some aspects or grounds of the pending appeal. There wouldn't be an orderly administration of justice. But there are some proceedings which do not affect the substance of the judgment and decree appealed against and which therefore are not barred by pendency of appeal in the court of appeal such as **"applications for leave to appeal (where applicable), provision of a certificate of point of law or execution where there is no order of stay of execution."** Looking carefully, the allowed applications are the ones necessary to pave way for the appeal process to take place or to implement the decision of the High Court as it is. Notably, if an application for execution of the decree appealed against is allowed, logically an application for taxation of an order for costs arising from the same decree would not be debarred. It is an application which is part and parcel of execution or enforcement of the Order for costs. In the Taxation of costs proceedings, the Taxing Officer does decide as to whether or not costs are awardable, the Taxing Officer enforces an order of costs as it is decreed in the judgment and decree. If the law has a remedy of restitution to the appellant judgment debtor in case he wins the appeal

after the decree has already been executed against him, the same remedy can be available to him in respect of the order of costs which might have been implemented against him before he wins his appeal. I therefore subscribe to the holding that pending appeal does not bar taxation of costs proceedings in the same way it does not bar execution proceedings in respect of the same judgment and decree appealed against. I find the Applicants' first ground of reference devoid of merits.

Looking keenly at the Ruling of the Taxing Officer I wondered why did the Applicants advance the first ground of appeal in the circumstances of this case. At page 4 of the Ruling of the Taxing Officer, in the 3<sup>rd</sup> paragraph the Taxing Officer stated:

**"Having considered the submissions by the learned counsels, in regard to the fact that the jurisdiction of this court ceased after the notice of appeal lodged, based on the principal laid in rose Mkeu's case that since Order 4 of the Advocates Remuneration Order, require taxation cause be filed within sixty days from the date of the order awarded costs, I found reasonable to proceed with taxation of this bill of costs, but for clarity, the Certificate in respect of costs awarded, to be executed after determination of the intended appeal." (underlining supplied).**

It appears that the Applicants already had secured an assurance in the very Ruling of the Taxing Officer that the taxed costs would not be executed until their appeal is determined by the Court of Appeal. Surprisingly, in her submissions in chief in support of the present application, the Applicants' counsel prayed for this Honourable Court to be pleased to set aside the order of the Taxing Master with instructions that taxation of costs be stayed to await the determination of the Appeal lodged in the Court of Appeal or vary it to cure the defects shown. I find that the worry expressed by the applicants of having the order of costs being implemented against them and thereafter getting problems to reverse the situation in case they win their appeal has already been taken care of by the very order of the Taxing officer who suspended the execution of the order of costs until the appeal lodged by the Applicants in the Court of Appeal is determined.

With regard to the second ground of reference, the Applicants are challenging the quantum of costs awarded to the Respondent in the Ruling and certificate of the Taxing Officer. The Applicants' learned counsel submitted that the award of Tshs. 25,000,000/= (Twenty-Five Million Shillings only) as instruction fees is by all standards on the higher side because the case took only 4 days namely 4<sup>th</sup> October 2022, 5<sup>th</sup> October 2022, 6<sup>th</sup> October 2022 and 16<sup>th</sup> October 2022 and not 17 months as held

by the Taxing Officer in her Ruling. The Respondent's counsel submitted that the case took 15 months, involved 9 exhibits and 4 witnesses testified. I am satisfied that the records show that the case did not take 4 days as argued by the Applicants' counsel. At page 5 of the Ruling of the Taxing Officer it is stated in the 3<sup>rd</sup> paragraph that:

**"On that basis I agree with Ms. Kumba's submissions that Commercial Case No.07/2022 was in respect of declaratory orders, which invalidates assessment of instruction fee under Item 8<sup>th</sup> of the Ninth Schedule to the Advocates Remuneration Order. However, reading the proceedings of the suit, it is clearly that the suit involved contentious and complicated proceedings as the Judgment Debtors filed a counter claim determined in favour of the Decree holder after hearing. Since the suit took about seventeen months, under item 1 (k) of the Eleventh Schedule, instruction fee under item 1 taxed at Tshs. 25,000,000/= only"**

Therefore, the correct records of the case are the ones which the Taxing Officer disclosed in her Ruling. The factors which she used to impose the Tshs.25 million as instruction fees were disclosed in the above reproduced portion of her Ruling and the other factors like the number of issues and witnesses. Also, the above reproduced portion of the Ruling of the Taxing



Officer shows that the instruction fees were taxed based on Item 1(k) of the Eleventh Schedule to the Advocates Remuneration Order. The Applicants have alleged that the Taxing Officer taxed the amounts excessively and that the proper amounts should have been Tshs. 2,500,000/=. I will, therefore, proceed to determine whether or not the discretion of the Taxing Officer to tax instruction fees under Item 1(k) of the Eleventh Schedule to the Advocates Remuneration Order 2015 is curtailed, restricted and limited to the upper limit of Tshs.1million only? This issue has been answered in numerous cases in Tanzania. In the case of **Trace Associates Limited and 2 Others Versus Rosemary Tryphone**, Taxation Reference No. 09 of 2023, High Court of Tanzania (Commercial Division) at Dar-Es-Salaam, the Taxing Master had awarded Tshs.5 million instead of the Tshs.1 million as instruction fees for a matter that fell under item 1(k) of the Eleventh schedule to the Advocates Remuneration Order, GN.263 of 2015 on the reason that the case was complex as it had taken 6 months to end. On reference to the High Court Judge (as per Hon. Nangela, J.) held:

**"In his submission, Mr. Shayo contended that, there has not been special reasons certified by a Judge regarding why the costs designated as instruction fees should be that much instead of what is prescribed under item 1(k) of the 11<sup>th</sup> schedule to**

**GN.264 of 2015. While I do take a concern in that regard, I am as well alive to the fact that, Taxing Officers do not act robotically by taking a strict approach to the application of the scales as provided for but do as well consider other factors which are well accepted by the courts. Such factors include the nature of the case itself, the time taken in disposing of the matter, value and nature of the subject matter, parties' behavior in facilitating expeditious disposal of the case, public policy of ensuring affordability of litigation and consistency in quantum of costs to mention but a few.....Essentially, it is an agreed principle that, instruction fees must be commensurate with the work for which they are to be charged. A tedious work will, definitely, attract much." (underlining supplied)**

The Honourable Judge in that case was of the view that the discretionary powers of the Taxing Officer under Item 1(k) of the Eleventh Schedule to the Advocates Remuneration Order was not limited to the prescribed maximum amount Tshs.1million only, but the Taxing master could go beyond the prescribed maximum amount provided that any departure made by the Taxing Officer from the prescribed upper limit must be justified by cogent and relevant reasons. In that case, the Honourable Judge reduced the amount of instruction fees from the Tshs. 5 million awarded to the scheduled

and prescribed amount of Tshs. 1 million only holding that the Taxing Officer had acted on a wrong principle.

If the relevant factors are not considered or the relevant principles of taxation are not followed by the Taxing Master while exercising his discretionary powers, then on reference, the Court will inevitably interfere with his Order. The extent to which, and grounds for, the court's interference with the decision of the Taxing Officer in taxation proceedings, were restated briefly in the case of **Asea Brown Boveri Ltd v Bawazir Glass Works Ltd and another** [2005] 1 EA 17, where guidance was given regarding how and when a taxation matter should be entertained. In that case the Court stated that:

**"A taxation reference would be entertained either on a point of law or on the ground that the bill as taxed was manifestly excessive or inadequate."**

I paused to ask whether in the **Taxation Cause No. 54 of 2023** which led to the present reference application, the Taxing Officer acted judicially and whether the Bill as taxed was manifestly excessive as to justify my interference? As to exercising the discretion judiciously, in my view, the Taxing Officer sufficiently acted judicially in giving relevant and reasonable considerations justifying her departure from the benchmark of Tshs.1million

prescribed under Item 1(k) of the Eleventh Schedule to the Advocates Remuneration Order 2015. This can be seen in the ruling where she considered that the case was complex one with a counter claim in it, it took 17 months from institution to disposal, 4 witnesses testified and 9 Exhibits were tendered. By giving the relevant reasons underlying her decision, the Taxing Officer in my view acted judicially.

I asked myself whether the Bill of costs as taxed was excessive? The learned counsel for the Applicants has argued that the instruction fees of Tshs. 25 million awarded is excessive in relation to the upper limit prescribed under Item 1(k) of the Eleventh Schedule. The respondent's counsel argued that the amount was reasonable in the circumstances of the case as disclosed by the Taxing Officer. Like I have said, the unchallenged Ruling in the **Taxation Cause No. 54 of 2023** which is subject of this reference held that the claims in Commercial Case No. 07 of 2022 were not in respect of liquidated sum but declaratory orders. Under the Item 1(k) of the Eleventh Schedule to the Advocates Remuneration Order, prescribes that the instruction fees thereunder shall be Tshs.1 million only.

I am therefore inclined to accept the argument by learned Advocate for the Applicants that the amount of Tshs. 25 million imposed by the Taxing Officer

as instruction fees in a place where the benchmark prescribed fee is the maximum of Tshs.1million, is excessive. I am not saying that the instruction fees of Tshs.25 million is excessive in relation to the amounts involved in the Commercial Case No. 07 of 2022. All that I am saying is that the instruction fees of Tshs.25 million awarded by the Taxing Officer was excessive and too much a departure when compared to the maximum prescribed ceiling of Tshs.1 million which the Item 1(k) of the Eleventh Schedule to the Advocates Remuneration Order has fixed. The Taxing Officer ought to have started her evaluation and assessment of the costs to be awarded as the instruction fees from the benchmark of Tshs.1 million prescribed in the Advocates Remuneration Order and then make some upward or downward deviations from the prescribed scale while considering the relevant factors applicable to the case before her. In my considered view, even with all the considerations given in the ruling of the Taxing Officer, still those factors could not reasonably justify the disproportionately higher amounts of costs awarded as instruction fees under item 1(k) of the Eleventh Schedule, all the way from the prescribed fee scale of Tshs. 1,000,000/= to the tune of Tshs. 25,000,000/-! There is no explanation why and how the said factors jettisoned the amount of instruction fees multiplying the same by 25 times.

Importantly, it appears to me that the other relevant factors and principles of taxation were not given much consideration. In particular, considerations of public policy to ensure affordability of litigation and consistency in quantum of costs were not given much attention.

I still the view in the current case that wording of Order 12 (1) of the Advocate Remuneration Order G.N 263 of 2015 makes it clear that the dictates of the provisions of the Advocates Remuneration Order come first before the Taxing Officer, in alternative, exercises his discretion to partly depart there from, a departure which should be geared towards attainment of justice which could not be so attained by sticking to the dictates of prescribed fees scales.

By prescribing the matters which should be included in the Advocates Remuneration Order, the Advocates Act, Cap 341 intended to make sure that such matters would be legally safeguarded and adhered to. The prescribed fee scales in the Order should therefore not be lightly brushed aside during the taxation exercise but should be taken as the reference points while traversing the way along the taxation exercise.

In fine, the Applicants have filed the present application for reference Order 7(i) of the Advocates Remuneration Order, 2015 after being aggrieved by

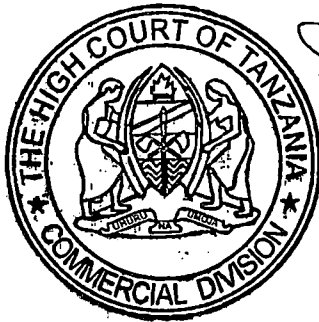
the Ruling of the Taxing Officer in Taxation Cause No. 55/2023. Order 7(i) of the Advocates Remuneration Order, 2015 stipulates that: **“Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court.”** I have already found that the departure from the prescribed fee scale of Tshs.1 million under Item 1(k) of the Eleventh Schedule to Tshs.25 million is excessive despite the existence of relevant factors in that case which warranted some deviations from the prescribed fees. I do hereby vary the Order of the Taxing Officer by setting aside the amount of instruction fees of Tshs.25 million and in its place I substitute for it instruction fees of Tshs.10 million which in my view meets the justice of the case after taking into consideration the same factors considered by the Taxing Officer. In addition, I have also taken into consideration public policy of ensuring affordability of litigation and consistency with the law in quantum of costs.

In arguing the second ground of reference, the applicants argued further that the other misapplication of law is seen in respect of the award of Tshs.50,000/= for items 5,8,10,11,14,18,23,27,37,38,39 and 40 of the Bill of Costs which were taxed in accordance with the Eighth Schedule to the Advocates Remuneration Order while the Eighth Schedule is reserved for fees in respect of business remuneration which are not otherwise provided

or attendance in ordinary cases per 15 minutes or part thereof. The Respondent's counsel responded that under Item 3(a) of the 8<sup>th</sup> Schedule to the Advocates Remuneration Order, Court Attendance of every 15 minutes is chargeable at Tshs. 50,000/-. She reasoned that attending the court for hearing the case reasonable could not have taken lesser than 15 minutes and therefore the award of Tshs. 100,000/= was reasonable as parties spent more than 15 minutes each time they attended the court. I fully subscribe to the submissions by the learned counsel for the Respondent. I have perused the said items in the Bill of Costs and the way the Taxing officer taxed them in her Taxation decision and I find nothing to fault the way she exercised her discretion in line with the law. I will not interfere.

In the upshot, the application at hand partly succeeds to the extent of reduction of the instruction fees awarded under Item 1(k) of the Advocates Remuneration Order from Tshs. 25,000,000/= (twenty-five million shillings only) to Tshs. 10,000,000/= (Ten Million Shillings only.) The other items in the Certificate of taxation and the Ruling of the taxing officer remain intact. I make no order as to costs as the application partly succeeds and partly fails. It is so ordered.





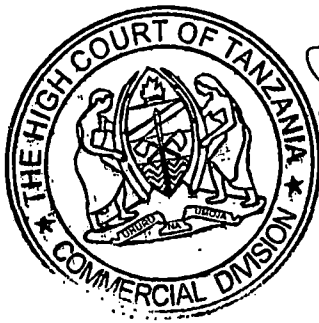
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**A. H. GONZI**

**JUDGE**

**17/04/2024**

Ruling is delivered in Court this 17<sup>th</sup> day of April 2024 in the presence of Eliezer Msuya learned advocate for the Applicants and in Vaileth Mutale learned advocate for the Respondent.



A handwritten signature in black ink, appearing to be "A. H. Gonzi", written over a horizontal line.

**A. H. GONZI**

**JUDGE**

**17/04/2024**