

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL REFERENCE No.28 OF 2023

(From Taxation Cause No. 71 of 2022 Before Hon Luambano)

GRACE JOSEPH ZELAMULA.....APPLICANT

VERSUS

SUMRY BUS SERVICES LTD 1ST RESPONDENT

UAP INSURANCE LIMITED..... 2ND RESPONDENT

RULING

01/11& 21st /11/2023

CHUMA, J.:

This is a reference by **Grace Joseph Zelamula**, the Applicant herein, from the decision of the taxing officer in taxation of costs in Taxation Cause No. 71 of 2022. The reference is made under Rule 7(1) & (2) of the Advocates Remuneration Order, 2015 [GN. No. 264 of 2015].

The background to the matter is that, in Civil Case No. 201 of 2018 the High Court sitting at Dar es Salaam awarded the Applicant, Grace Joseph Zelamula, a total of **Tzs. 223,891,870/=** with costs. Thereafter, the learned counsel for the Applicant, **Ms. Janeth Shayo**, filed a bill of costs totaling **Tzs. 19, 939, 500/=** being instruction fees and costs for attendance to prosecute the said case. Mr. Cosmas Mathias, learned Counsel for the Respondent contested the claim on the ground that the claimed

amount was excessive and hence contravened the provisions of the Advocate Remuneration Order GN. No. 264 of 2015. The taxing officer accordingly taxed the bill to the tune of **Tzs. 7,139,000/=** hence this ruling.

Before this court, **Ms. Anna Amon Mlimakifi**, learned Counsel appeared for the Applicant and **Mr. Benjamini Kalume**, learned Counsel appeared for the 1st Respondent and **Mr. Kelvin Kidifu**, learned Counsel appeared for the 2nd Respondent. The application was disposed of by way of written submissions.

The reference is directed against the instruction fee and costs of attendance. The argument by **Ms. Anna Amon Mlimakifi** (hereinafter referred to as Ms. Anna) was that the taxing master erroneously reduced the amount of **Tzs.15,700,000/=** to **Tzs.5,000,000/=** as instruction fees while the matter was not only contentious but it involved a colossal amount of a liquidation sum of **Tzs. 223,891,870/=**. Buttressing her submissions, Ms. Anna was of the view that, according to item 7 of the Ninth Schedule of Advocates Remuneration Order, 2015 the amount of **Tzs. 223,891.870/=** falls within the scale of **3%-7%** of the claimed liquidated sum. According to Ms. Anna, the Applicant employed 7% to arrive at the claimed instruction fee since the case was highly contentious to the extent it needed expert testimony, an insurance expert. It also necessitated the Applicant to incur costs to bring a Police – Traffic Officer from the Tabora Region to testify on contributory negligence. Ms. Anna argued further that, the taxing master inadvertently referred to 3% and went on to correct the Applicant by stating that 3% is charged to the amount of above 400,000,000/=. According to Ms.

Anna, the Applicant employed 7% after having taken into account some factors like time taken, energy, conducting of research in preparation of pleadings, and the number of witnesses called by the Applicant. Ms. Anna surmised by arguing that, the taxing officer misdirected himself by giving his decision on the ground that the 3% is only charged to the matter from 400,000,000/= while the law specifically provided under the item 7 of Ninth Schedule of the Advocate Remuneration Order 2015, the scale is from 3%-7% for the amount between 150,000,000/= to 400,000,000/=.

Arguing on the costs for attendance. Ms. Anna stated that the taxing officer erred in law and facts by awarding the total of 1,400,000/= at the rate of 50,000 per attendance. According to Ms. Anna, the Applicant spent in courts for more than 15 minutes waiting for the case and sometimes hearing was conducted at night. Ms. Anna went further stating that parties cannot spend 15 minutes for 1st PTC, mediation, hearing, and judgment. In support of her argument, Ms Anna referred this Court to the decision in the case of **Premchand Raichand Ltd and Another v. Quarry Services of East Africa** where it was held that;

"an advocate is entitled to the costs of 100,000/= for mention, 250,000 for hearing and 200,000 for judgment. The amount billed is not based on mathematical exercise but later an experience of any reasonable..."

Mr. Benjamini Kalume countered that the Applicant being an aided person who was given legal aid by the name of legal assistance to victims of accidents as a non-Government Organisation is not entitled to gain as per section 25(1) of the Legal Aid Act No. 1 of 2017. Mr. Benjamini submitted

further that, the legal aid provider when drafting court documents for filing, is accompanied by a legal aid certificate exempting the aided person from paying court fees. Mr. Benjamin was asking how the Applicant through their advocates demanded payment while she received the service for free.

Mr. Benjamin submitted further that, as per Order 55(3) of the Advocates Remuneration Order GN. No. 263 of 2015 the taxing officer has the legal discretion to assess the costs which have been incurred by the Applicant in the preparation, filing, and prosecuting of the entire proceedings concerning the present bill of cost. Buttressing his submissions, Mr. Benjamini referred this court to the decision in the case of **Joreth Ltd v. Kigano & Associates [2002] 1 EA 92** which held that;

"...the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any discretion by the trial judge and all other relevant circumstances".

Mr. Benjamini cited another of **Premchand Raichand Ltd and Another v. Quarry Services of East Africa Ltd and Others** where the court stated that;

"...that costs shall not be allowed to rise to such a level as to confine access to the courts to only the wealthy and that the successful litigant ought to be fairly reimbursed for the costs he reasonably incurred".

On the other hand, the 2nd Respondent contested that, the office of Decree Holder's Counsel is a non-governmental organization which is a non-profit organization providing legal aid to victims of accidents, and therefore it is

not allowed to conduct business on profit. The 2nd Respondent referred this Court to the provisions of section 25(1) of the Legal Aid Act, No.1 of 2017 which bars legal aid providers from receiving payments as profits. The 2nd Respondent was of the firm view that, the instruction fee was charged illegally contrary to section 25(1) of the Legal Aid Act, No. 1 of 2017.

The 2nd Respondent submitted further that, the instruction fee was illegally or excessively charged in contravention of Order 13 of the Advocate Remuneration Order and that there was no evidence to prove the allegation that they incurred the cost of procuring traffic officer from Tabora and other witnesses to testify in the trial court.

The 2nd Respondent submitted further that, the attendance fee is part of the instruction fee. To support his argument, the 2nd Respondent referred this court to the decision in the case of the **Jubilee Insurance Company of Tanzania Ltd v. Vodacom Tanzania Public Ltd Co. Consolidated Taxation Reference No. 02 & 03 of 2020 (unreported)** where Hon. Nangela, J, at page 23 cited with approval the case of **ZTE Corporation v. Benson Informatics Limited t/a Smart, Commercial Reference No. 61 of 2018** and the case of **Awadh Abdallah vs. Wengert Windrose Safari (T), Misc. Commercial Application No. 68 of 2014 (unreported)** where it was stated that;

"...according to the learned counsel for the Applicant, the Taxing master erred. He argued that the 8th Schedule has three items: i.e (i) instructions fee (ii) drawing and perusing and (iii) court attendance. He contended that the separate figure of Tzs. 390,000 claimed in

respect of these should not have been taxed off. On the other hand, the counsel for the Respondent opposed such a view arguing that such items fall within the ambit of instruction fees. In my view, the learned counsel for the Respondent in her submission. The Tax Master cannot be faulted since all such amount of the three items forms part of the instruction fees”.

The 2nd Respondent submitted further that, the Decree Holder’s Counsel’s official address in the Bill of cost indicates that their office is located at NIC Investment House, Samora Avenue Street which is very near to this Court and thus the alleged cost of wear and tear is fallacy and baseless. The 2nd Respondent concluded by stating that, the attendance fee is highly excessive, unreasonable, and unjustifiable.

As a general rule, the allowance for instruction fees is a matter peculiarly in the taxing officer’s discretion and courts are reluctant to interfere in that discretion unless it has been exercised unjudicially. This principle was stated in the case of **Haji Athumani Issa v. Rweitam Matatu [1992] TLR 372 (HC)** as rightly submitted by Ms. Anna Amon Mlimakifi, the learned Counsel for the Applicant. In the case of **Premchand Raichand v. Quarry Services of East Africa Ltd [1972] E.A. 162** it was stated that;

“the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party”

From the court record and rival submission of the learned counsel for the parties in dispute, the issue beforehand for determination is whether the application has merit or not.

In exercising its discretion, the taxing officer taxed off the instruction fee by 3% instead of 7% being the rate proposed by the Applicant. The critical question here is whether 3% is too low to amount to an injustice. In the original case, Civil Case No. 200/2018, the total claimed amount was Tzs. 223,891,870/=. For the purposes of taxation, the claimed amount falls under item 7 of the Ninth Schedule of the Advocates Remuneration Order 2015 setting a scale of 3% - 7% for contentious proceedings between 150,000,000 and 400,000,000/=. In the eyes of the law, 3% imposed by the taxing officer was within the scale set by the law. Setting the minimum scale of 3% instead of 7% as proposed by the Applicant was within the discretion of the taxing officer. Reasons for taxing off by 3% are reckoned on page 13 of his ruling of which one of them was that, the claimed instruction fee of Tzs. 15,700,000/= computed by 7% was excessive. The question that 3% is only charged to the matter from 400,000,000/= was an oversight on the part of the taxing officer because 3% may be imposed in both items 7 & 8 of the Ninth Schedule of the Advocates Remuneration Order 2015. However, this Court finds no reason to dwell further into his decision because, in the first place, the Applicant prosecuted the original suit under the auspice of the legal aid provider. This very fact has never been encountered by the Applicant by way of rejoinder submissions though she was afforded an opportunity to do so if she finds it necessary. Based on this ground, the taxing officer had an option not to charge anything in respect of

instruction fees. For the above reasons, the Applicant's allegation on instruction fee is unmeritorious.

Turning to costs for attendance, the taxing officer on page 14 of his ruling observed that, the Applicant did not assign good cause for the court to award the total claimed amount. The taxing officer was of the view that, for the Court to charge fees on attendance under item 23(sic) of the Eight Schedule the Advocates Remuneration Order, 2015 the Applicant ought to have accounted for the time spent. According to the taxing officer, the Applicant failed to discharge such a duty and thus opted to charge Tzs. 50,000/= per attendance. Having keenly followed the court records and submissions by the Applicant, time spent has never been established by the Applicant. In the circumstances, it is difficult for this court to determine whether the charged amount was on the lower side. The taxing officer exercised his discretion by charging Tzs. 50,000/= per attendance based on the circumstances of the case before him. It is important to note that, each case has to be determined by its own circumstances. The case of **Premchand Raichand Ltd and Another v. Quarry Services of East Africa** cited by the Applicant cannot fit in the circumstances at hand because, in the matter at hand, the law requires the time spent to be established.

It is for the above reasons, that this Court finds that, the application at hand is devoid of merits and it is accordingly dismissed. Having taken into account

that, the Applicant is prosecuting this matter under legal aid, this court shall not make any order as to costs. Each party should bear its own costs.
It is so ordered.

Dated at Dar es Salaam this 21st day of November, 2023.



A handwritten signature in black ink, appearing to read "W.M. CHUMA", is written over a horizontal line.

W.M.CHUMA

JUDGE

21st /11/2023