

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

AT DAR ES SALAAM

TAXATION CAUSE NO. 131 OF 2023

(Arising from the Civil Case No. 109 of 2021)

DOUBLE A COMPANY LIMITED.....1ST APPLICANT
A.A TRANS LIMITED.....2ND APPLICANT
AKBER BASHIR VERSI.....3RD APPLICANT
ASGHER BASHIR VERSI.....4TH APPLICANT

VERSUS

ECOBANK TAZANIA LIMITED.....RESPONDENT

RULING

Date of Last Order: 3/10/2023

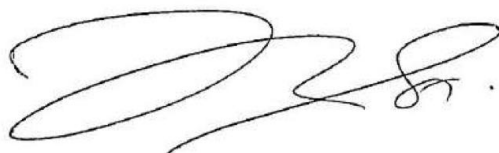
Date of Ruling: 25/10/2023

J. D. LUAMBANO – TAXING OFFICER

The Applicants herein filed this application for Bill of Costs claiming a total of TZS. 1,499,023,560.7/= against the Respondent. The same emanates Civil Case No. 109 of 2021.

At the hearing of the application, the Applicants enjoyed the legal services of Mr. Dismas Raphael learned advocate whereas the Respondent was represented by Mr. Deogratias Ringia, the matter being disposed by way of written submissions.

Submitting in support of the application, Mr. Dismas stated that, the instruction fee in item 1 to 4 is claimed at TZS. 1,498,413,560.7/= as each Applicant approached the firm separately hence charged separately. He

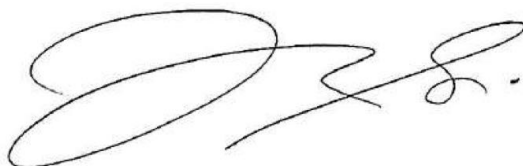


stated that the Applicants were separately and jointly sued in Civil Case No. 109 of 2021 for a claim of USD. 3,856,379.09 and TZS. 429,854,402.93. Mr. Dismas stated that in assessing fees the Courts are governed by several precedent citing that of *Haidar bin Mohamed Elamerdiy & Others vs. Khadija Binti Ali 1956] 23 EACA.*

In reply Mr. Ringia stated that the claimed amount as instruction fee is more excessive than what is required by law. He stated that the Applicants violated Order 62 of the Advocates Remuneration Order which requires separate pleadings to be delivered where the same Advocate is employed by more than one plaintiff or defendant. He stated that as per the records there is no separate pleadings and further the case was not determined on merit as it ended on preliminary objection.

Regarding to items 5, 6, 7, 8, 8, 9, 11 and 12, Mr. Ring stated that the same are not contested save for item 10, 13, and 14 which he stated that neither the Advocates for the Applicants nor the Applicants themselves appeared in Court but it is Advocates for the Respondent who were holding brief of the Advocates for the Applicants. He further stated that in respect to item 15 there is no proof showing that the advocate did communicate with his clients as stated.

On rejoinder submissions, Mr. Dismas stated that, the instruction fee is fair and reasonable in accordance with Advocates Remuneration Order, 2015 as the Applicants separately engaged the Advocates. On item 15, he stated that the amount is reasonable incurred through airtime and internet to furnish communication.

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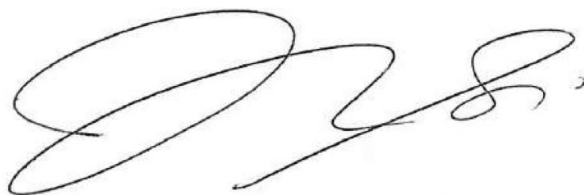
Having gone through the submissions by the Applicant herein, it is now the turn of this Court to put the same into scrutiny and tax this matter in accordance to the law and in consideration of other factors.

In regard to item No. 1 to 4 for payment of TZS. 1,498,413,560.7/= as instruction fees, I am alive to the current position stated in the case of ***Tanzania Rent a Car Limited vs. Peter Kimuhu***, Civil Reference No. 9 of 2020, Court of Appeal of Tanzania at Dar es Salaam (unreported) stated as follows,

....no requirement of proof of instruction fee by presentation of receipt but determining the quantum in according to the statutory scales and other factors therein.

In the case of ***Hotel Travertine LTD vs. National Bank of Commerce***, Taxation Civil Reference No. 9 of 2006, Court of Appeal of Tanzania at Dar es salaam (unreported), it was stated that the Taxing officer has to take consideration a number of factors like the amount involved in the matter, its nature, importance and difficulty, the interest of parties, the general conduct of the proceedings and all other relevant circumstances.

That being said I have gone through the submissions in respect to the instruction fees, but also considered the statutory scale for the original case and other factors. It was Mr. Dismas argument that Applicants were separately and jointly sued in Civil Case No. 109 of 2021 for a claim of USD. 3,856,379.09 and TZS. 429,854,402.93. On his part, the Respondent stated that the Applicants violated Order 62 of the Advocates

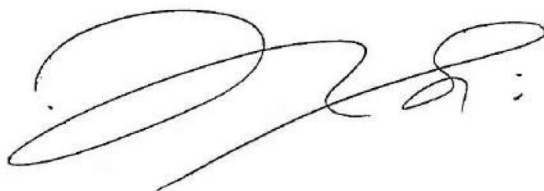
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Remuneration Order which requires separate pleadings to be delivered where the same Advocate is employed by more than one plaintiff or defendant. To my observation I concur with the Respondent's counsel that charging was not supposed to be separately. That being said, I find the claimed amount to be excessive and I therefore, tax at the tune of TZS. 300,000,000/=.

In regard to item 6, 8, 9, 10, 11, 13 and 14 of the Bill of Cost that covers for Court attendance, **item 3 (a) of the 8th Schedule to the Advocates Remuneration Order, 2015** provides for attendance costs of TZS. 50,000/= for each 15 minutes. It is understood that the courts have no practice of recording time spent. In the case at hand the Applicant charged different amounts in each item. In the case at hand the Applicants charged TZS. 50,000/= per attendance which is normal prescribed rate however item 10, 13, and 14 was contested by the Respondent stating that it was the Advocates for the Respondent who held brief for the Advocates of the Applicant. I therefore tax only item 6, 8, 9, and 11 at the total tune of TZS. 200,000/=, item 13 and 14 are taxed off.

On the disbursement, I tax the 5, 7, and 12 as presented in the total tune of TZS. 60,000/= being the fees for filing Written Statement of Defence, notice of preliminary objection and submission.

Lastly, I am aware that the present application for bill of cost was prepared, filed and prosecuted under the care of a learned counsel, consequently I approximate and tax it in a total sum of TZS. 500,000/=.

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In the upshot, this Bill of Costs is taxed in the total sum of TZS. 300,760,000/= the rest is taxed off.

It is so taxed.


J. D. LUAMBANO -TAXING OFFICER

25/10/2023

Further rights fully stated.


J. D. LUAMBANO -TAXING OFFICER

25/10/2023

Ruling has been delivered in chamber in the presence of Ms. Manzi Ringia advocate for the respondent also holding brief of Mr. Dismas Raphael advocate for the applicants.




J. D. LUAMBANO -TAXING OFFICER

25/10/2023