



**ECOBANK TANZANIA LIMITED v. A.A. TRANS LIMITED and 3
OTHERS**

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(MWAMBEGELE, MAIGE, and MDEMU, JJ. A.)

CIVIL APPEAL NO. 399 OF 2020

(Appeal from the ruling and order of the High Court of Tanzania,
Commercial Division at Dar es Salaam, Magoiqa J, dated the 29th day of
November, 2019 in Commercial Reference No. 6 of 2019)

*Civil Procedure and Practice – Taxation of Costs - Whether decision of the
taxing master was, in compliance with the law.*

*Civil Procedure and Practice - Taxation of Costs - Instruction Fees- Whether
the taxing officer's award of separate instruction fees to the
respondents was proper.*

The appellant filed a suit in the High Court of Tanzania against the respondents for payment of TZS 994,818,151.12 and USD 1,299,761.98, being an outstanding loan amount granted to the first respondent and guaranteed by the second, third, and fourth respondents. However, the suit was struck out at the preliminary stage because the plaint exceeded the maximum page limit of 10 pages under Rule 19(1) of the High Court (Commercial Division) Procedure Rules, 2012.

Following the dismissal, the respondents filed a bill of costs claiming 3% of the subject matter, totaling TZS 566,400,000.00, as instruction fees. The taxing officer awarded 1%, equivalent to TZS 39,792,736.0448 and USD 51,997.4792, which was later upheld by the High Court.

Dissatisfied, the appellant appealed to the Court of Appeal, arguing that the awarded amount was excessive, considering that the suit was struck out merely for procedural reasons. The respondents defended the award, stating



that the taxing officer correctly applied the prescribed scale under the 9th Schedule of the Advocates Remuneration Order, 2015 and that the bulkiness of the plaint required extensive preparation and prayed for the dismissal of the appeal.

Held:

- (i) Since the respondents were jointly represented and their defense was uniform, the instruction fees should have been shared among them, rather than awarding them separately.

Appeal allowed.

Statutory provisions referred to:

- (i) Rule 19(1) of the High Court (Commercial Division) Procedure Rules, 2012 (GN 250 of 2012)
- (ii) Order 40(2) of and paragraph 8 of the 9th Schedule to the Advocates Remuneration Order, 2015

Case referred

- (iii) The Registered Trustees of Cashewnut Industry Development Fund v. Cashewnut Board of Tanzania, Civil Reference No. 4 of 2007 (unreported)
- (iv) Kitinda Kimaro v. Anthony Ngoo and Another, Civil Application No. 576/2 of 2018 (unreported)
- (v) Hotel Travertine Ltd v. the National Bank of Commerce, Civil Reference No. 9 of 2016 (unreported)

Mr. Deogratius William Ringia assisted by Ms. Inviolata Wangoma for the Appellant

Mr. Dismas Raphael, for the Respondents