

BRUNO ENTRERPRISES T/A TRANSPORT SPARES
AND ACCESSORIES

versus

MESSENGER OF COURT, KAROI N.O.

HIGH COURT OF ZIMBABWE

WAMAMBO J

HARARE, 25 October 2023

Chamber Application

G Maromo, for the appellant

K P Shamhu, for the respondent

WAMAMBO J: This matter was referred to me in chambers in terms of Rule 72(25) of the High Court Rules, 2021 which Rule provides as follows:-

“The taxing officer may, without filing any formal documents, submit any point arising at a taxation for decision by a Judge in chambers and it shall be competent for the taxing officer and for the legal practitioner who appeared at the taxation to appear before the Judge respecting such point.”

The applicant is the Messenger of the Magistrate Court at Karoi who approached the taxing officer requesting taxation of storage costs in respect of copper which was attached *ad fundandum jurisdictionem* under Case Number HC 10736/14.

Pursuant to the order founding jurisdiction, respondent herein instituted proceedings for delictual damages under case number HC 805/15. The litigation was protracted.

The parties eventually resolved their dispute and entered into a deed of settlement on 31` July 2023. The said deed was amended by an addendum dated 10 December 2023. The copper which was attached to found jurisdiction belonged to Tenke Fungurume Mining Sar (hereinafter referred to as Tenke) who is not party to the taxation.

After the settlement referred to above respondent and Tenke approached the Sheriff of the High Court to obtain requirements for the release of the ninety tonnes of copper.

The Sheriff pegged its commission at US\$40 000.00 which was tendered in full in local currency at the prevailing rate. The applicant refused to accept applicant’s offer of settlement and came up with a bill for taxation. I shall return to deal with this issue later in the judgment.

The Sheriff in the meantime issued a release note releasing Tenke's property from attachment.

The applicant's case is as follows'

On 16 September 2024 the applicant petitioned the taxing officer for taxation of its bill of costs for storage of the copper belonging to Tenke.

The request for taxation was predicated upon the order of this Court, per ZHOU J, the operative part which reads:-

"The respondent shall submit to the Registrar of this Honourable Court for taxation and due process its bill in respect of storage costs or any other charges that it seeks to recover."

The respondent's case is as follows:-

Respondent objected to the taxing officer taxing the bill. In its objection the respondent takes issue with the legal personality of the applicant among other issues. Respondent also takes issue with the entitlement of the applicant to charges raised.

At the determination of the matter the taxing officer referred the matter in terms of Rule 72(25) of the High Court Rules, 2021 for directions. The starting point in the resolution of this matter relates to what costs can be taxed by the taxing officer in terms of Rule 72 of the High Court Rules 2021. In that regard Rule 72(3) is instructive. It provides as follows;-

"With a view to affording the party who has been awarded, an order for costs reasonably incurred by him or her in relation to his or her claim or defence and to ensure that all costs shall be borne by the party against who such order has been awarded, the taxing officer shall on every taxation allow all such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over caution, negligence or mistake, or by payment of a special fee to another legal practitioner, or special charges and expenses to witnesses or other persons or by other unusual expenses."

The costs contemplated by Rule 72 relate to legal costs incurred in litigation Taxation of any costs like storage costs do not fall within the purview of those contemplated under Rule 72.

With the above understanding in mind, the question which arises for determination is whether the order of ZHOU J related to legal costs taxation. If the answer in the above matter is in the negative that is the end of the matter. If it is in the affirmative then the taxing officer could tax the bill.

ZHOU J's order related to storage costs or any charges which are outside the purview of the taxing officer. In my respectful view the question of storage costs is regulated by the Sheriff of the High Court and not the Registrar.

By reason of the taxing officer not empowered by the Rules of Court or at law to tax a bill of storage charges or related charges, the request for taxation is a nullity see *Augustos Close Holdings (Private) Limited v The Taxing Officer and Others* HH 417/24.

A proper reading of Rule 72(3) of the High Court Rules, 2021 appears to resonate with the conclusion I have reached regarding what the taxing officer can do at law.

I thus find no merit in the request for taxation as what is requested is a nullity at law. I order as follows:

1. The Registrar is directed to decline jurisdiction in a taxation matter in case number HCH 73/24.
2. Each party shall bear its own costs.

WAMAMBO J:.....

Sadowera Kuwana, applicant's legal practitioners
Ziumbe & Partners, respondent's legal practitioners