

ZESA HOLDINGS (PVT) LTD  
versus  
SYDNEY ZIKUZO GATA

HIGH COURT OF ZIMBABWE  
CHIRAWU-MUGOMBA J  
Harare, 8 March 2022

**REFERRAL OF A TAXATION MATTER TO A JUDGE IN CHAMBERS IN TERMS  
OF RULE 72(25) OF THE HIGH COURT RULES, 2021**

CHIRAWU-MUGOMBA J: On 8 March 2022, in chambers, I gave the following order:

- “1. In terms of r 72(25), of the High Court Rules, 2021, the Registrar of the High Court Harare in his capacity as a taxing officer or their nominee shall:
- (a) Guided generally by r 72 and specifically r 72 (4) tax the bill of costs prepared by Messrs Sinyoro and Partners as between it and ZESA Holdings in case number HC 4078/20.
  - (b) The notice of taxation and bill of costs shall be served on Messrs Muvingi and Mugadza Legal Practitioners representing ZESA Holdings (Pvt) Ltd”.

The history of this matter is as follows. On 1 August 2020, the applicant represented by Messrs Sinyoro and Partners filed an urgent chamber application for an interdict against the respondent. The judgment of CHITAPI J, in that matter, that is HH 554-20 shows that the legal practitioners who appeared for the applicant at the hearing are one M. *Banda* and M. *Sinyoro*. One L. *Madhuku* appeared for the respondent. These legal practitioners are indicated on the judgment as being from Messrs Sinyoro and Partners, for the applicant and Lovemore Madhuku Lawyers for the respondent.

On 28 October 2020, Messrs Sinyoro and Partners filed a bill of costs and a notice of set down for taxation. The causa of the bill indicated as follows: ‘Bill of costs due to Messrs Sinyoro and Partners on a legal practitioner to client scale’. Where it had been directed to ZESA Holdings (Pvt) Ltd, there is a cancellation and substitution of Muvingi and Mugadza specifically one N.M. Phiri. The date of taxation was set as 10 November 2020. There is an endorsement on the notice of set down that Sinyoro and Partners were in default and the time is indicated as 11: 04 a.m.

After exchange of correspondence between the two law firms, what emerges is that Messrs Mvingi and Mugadza were contending on behalf of the applicant that Messrs Sinyoro and Partners had acted without authority when they filed the urgent application. They further contended that the reliance by the former on the judgment by CHITAPI J as showing that they had authority was erroneous since that judgment was subject of an appeal. They therefore insisted that the matter be placed before a Judge in terms of s 313 of the High Court Rules of 1971.

The relevant rule reads as follows:

**“313. Taxing Officer may refer point to a judge in chambers**

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 practitioners who appeared at the taxation to appear before the judge respecting such point.

See “in *Re Matimura* HH 12-10; *Mavurudza and Anor v Meidler Pools and Construction (Pvt) Ltd*, HH 234-11 and *Mutyasira v Gonyora*, HH 218-10”.

This rule is now r 72 (25) of the High Court Rules of 2021.

I directed that the legal practitioners from Sinyoro and Partners and Mvingi and Mugadza and the taxing officer appear in my chambers on 12 March 2021. In attendance were S. *Banda* from Sinyoro and Partners, N. *Hove* and L.K. *Charangwa* from Mvingi and Mugadza and G. Chikanya, an Assistant Registrar of the High Court. The legal issue was clarified as being that of whether or not Messrs Sinyoro and Partners had authority to act for the applicant. I then invited the legal practitioners to make submissions on this point. They all indicated that they were in the process of resolving the issue and that therefore the matter be held in abeyance. I directed that they put that in writing and both law firms proceeded to confirm this development in writing. On 14 October 2021, Messrs Sinyoro and Partners addressed a letter to the Registrar indicating that no settlement had been forthcoming and that the record be returned to my chambers.

The parties were invited to attend my chambers on 8 March 2022 for continuation of the matter. The legal practitioners confirmed that despite their best efforts, the matter had not been settled and they invited me to make a decision on the issue of authority. In the *Mutyasira* matter, (*supra*), the presiding Judge directed the legal practitioners to file heads of

argument. I considered whether I should follow the same approach but I did not for reasons that will appear below.

The work of a legal practitioner in Zimbabwe is largely governed by the Legal Practitioners Act [*Chapter 27:07*] as read with schedule, the Legal Practitioners (Code of conduct) By-Laws of 2018. A legal practitioner is entitled to charge and receive legal fees for work done on behalf of a client based on the legal practitioner to client relationship and guided by the tariff set by the Law Society, see r 72(7). The costs that Messrs Sinyoro and Partners are seeking are clearly those of a legal practitioner and client and not party to party. Therefore the contention by Messrs Muvingi and Mugadza that these costs depend on the judgment by CHITAPI J is misplaced.

In my view, the issue of whether or not a legal practitioner has authority to act lies at the root of the legal practitioner to client relationship. The cases in relation to the then R313, cited above deal mostly with the issue of money- the currency, the reckoning of time from which to calculate the costs and the amounts charged. In my view, the issue of authority to act cannot be a matter that is envisaged by R313 (now R72 (25) for determination by a Judge through referral by a Taxing Officer. The language used itself gives credence to my view. The referral is done in an informal manner without filing by the Taxing Officer of any formal documents. The issue of authority to act goes to the root of HC 4078/20. It needs to be properly ventilated as it has far reaching consequences. It speaks to ethical conduct or lack thereof - see s 37 of the Code of Conduct by-laws referred to above. Filing of heads of argument without a proper context would not have placed me in a better position to make a determination. As far as I am aware, the judgment by CHITAPI J is still extant. In my view, Messrs Muvingi and Mugadza ought not to have raised this issue at taxation stage. It requires proper ventilation.

As long as the authority of Messrs Sinyoro and Partners to act for the applicant in HC 4078/20 has not been properly impugned, there is no reason why the bill of costs on a legal practitioner to client scale cannot be taxed.

**Accordingly, an order was granted as stated.**

*Muvingi and Mugadza*, applicant's legal practitioners  
*Sinyoro and Partners*, respondent's legal practitioners