



**Kimani v Aqua Agro Limited & 3 others (Civil Case
21 of 2017) [2024] KEHC 9915 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE 21 OF 2017**

SM GITHINJI, J

JULY 30, 2024

**IN THE MATTER OF: AN OBJECTION TO A JUDGE IN CHAMBERS FROM
AN ORDER ON TAXATION OF THE SECOND
DEFENDANT’S PARTY AND PARTY BILL OF COSTS
MADE ON 19.05.2021 (HON. D. WASIKE, TAXING
OFFICER & DEPUTY REGISTRAR, HIGH COURT)**

AND

**IN THE MATTER OF: REASONS AND TAXATION ORDER ON THE 2ND
DEFENDANT’S PARTY AND PARTY BILL OF COSTS
DATED 20.01.2020 IN MALINDI HCCC NO. 21 OF
2017 1. AQUA AGRO LIMITED 2. FRANCIS MUNGAI
MBURU 3. ALMASI LIMITED VERSUS CHAKAMA
RANCHING CO. LIMITED & STEPHEN MACHARIA**

KIMANI.

BETWEEN

STEPHEN (SULEIMAN) MACHARIA KIMANI OBJECTOR

AND

AQUA AGRO LIMITED 1ST RESPONDENT

FRANCIS MBURU 2ND RESPONDENT

ALMASI LIMITED 3RD RESPONDENT

CHAKAMA RANCHING CO LIMITED 4TH RESPONDENT



RULING

1. For determination is the Chamber Summons application dated 19th May, 2021, brought under Section 11(1) & (2) of the Advocates (Remuneration) Order. The 2nd Defendant objects the taxation of the Party and Party Bill of costs dated 21.06. 2021 on the following grounds;
 1. That the Learned taxing officer misdirected herself in law and fact when she found that the value of the subject matter of the suit was not ascertainable from the pleadings, or the judgment as the matter was withdrawn before hearing.
 2. In the alternative, the learned taxing officer erred in law when she ruled that the value of consideration payable under the impugned purchase by the government of Kenya mentioned in the suit was not indicative of the value of the subject matter merely because the ‘...suit did not crystalize and there was no liquidated value.
 3. The Learned taxing officer misdirected herself in law and fact when she failed to consider the fact that, inter alia, the 2nd defendant’s long professional practice as an advocate was in grave danger and had the Plaintiffs succeeded in their suit, the measure of award of damages for the threatened sale of land or for defamation, would have been the pleaded value of the contract or intended contract.
 4. The learned taxing officer failed to appreciate the novelty of and difficult legal hurdles the plaintiff was intended to circumvent.
 5. The Learned taxing officer erred in law by impulsively awarding a sum of Kshs. 500,000/- on instruction fees.

Submissions

2. The 2nd Defendant filed submissions dated 4th November, 2023 on the 8th day of November, 2023. He submitted that a judge can only interfere with an award of a taxing officer when such an award is so high or so low as to amount to an injustice to one party as was held in the case of Premchand Raichand =versus= Quarry Services (1972) EA 162, 164. He submitted that the award of the taxing officer was too low as to accession an injustice to the 2nd defendant.
2. According to him, the claim appears as a simple claim for damages for defamation but the Plaintiff was couched in such an ingenious way as to conceal the real purpose of litigation. Further, the court and especially the taxing officer could not look at the irrevocable power of attorney in isolation and disregard the value of the subject matter of the suit.
3. It was his aversion that the copious volumes of the Plaintiffs’ applications and list of documents and pleadings were voluminous. That the application for interim relief alone was 370 pages while the list of documents was 344 pages which ideally required care and industry to sieve through and understand the Plaintiffs’ claim. He submitted that in every respect of the matter, this could not be said to be a simple defamation dispute for which the value of the subject matter is undeclared or irrelevant for the purposes of taxing costs as awarded. It was his further submission that the matter was of national significance given the colossal sum the government was expected to expend on the settlement of squatters.
4. He implored the court to interfere with the taxing officer’s order to prevent an injustice as was held in the case of Rogan Kamper =versus= Lord Grosvenor (1977) KLR 203, 205 where the Court held that a judge may interfere where a taxing officer allows in comparable cases almost double the fees allowed in



recent decided cases. That such interference is on the basis that the awarded fee is manifestly excessive. According to him, the same principle may apply with equal measure where the taxing master fails to take into account all the relevant factors and awards costs at an inordinately low figure.

Disposition

5. I have carefully considered the applicant's chamber summons application dated 19th May, 2021, the submissions filed by the Objector and the authorities supplied and relied on. In my humble view, the main issue for determination is whether this court should interfere with the taxing officer's taxation of 19.05.2021.

6. I am well guided by the decision of the Court of Appeal in the case *Kipkorir, Titoo & Kiara Advocates =versus= Deposit Protection Fund Board Civil Appeal No. 220 of 2004; (2005) eKLR*, in which the learned appellate judges held inter alia:

“On a reference to a Judge from the taxation by a taxing master, the judge will not normally interfere with the exercise of discretion by the taxing master unless the taxing master, erred in principle in assessing the costs.”

7. Further, the judges determined that;

“It is true that the taxing officer did not record the reasons of the decision on the items objected to after the receipt of the respondent's notice. It seems that the taxing officer decided to rely on the reasons in the ruling of taxation dated 24th February, 2004. That ruling at least indicated the formula that the taxing officer applied to assess the instructions fees. Although there was no strict compliance with Rule 11 (2) of the Order, we are nevertheless, satisfied that there was substantial compliance. The adequacy or otherwise of the reasons in the ruling is another matter. Indeed, we are of the view, that if a taxing master totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference.”

8. I have perused the taxing master's decision in this case, on the instruction fees which is in contention in this reference, the taxing master stated:

“On item 1... ‘the suit did not crystallize and there was no liquidated value...from the foregoing, given the nature and importance of the matter together with the time expedited, noting that the matter was withdrawn before going to full trial, I increase the basic instruction fee from Kshs. 75,000.00 and increase the same to Kshs. 500,000.00/=.”

9. As a general rule, the High Court will not interfere with the decision of a Taxing Officer unless there exists an error in law or in principle. In the present case, the Objector asserts that the claim appears as a simple claim for damages for defamation but the Plaintiff was couched in such an ingenious way as to conceal the real purpose of litigation.

10. I have perused the case as cited and I note that the reference therein arose from a claim for a defamatory action. I also note that the suit was withdrawn before hearing and as such, the value could therefore not be ascertained from the Judgment as there was none. It then follows that, and as rightly held by the taxing master, the applicable scale was paragraph 1 providing for “other matters”. It is also noted that the taxing officer considered a number of things; nature and importance of the matter, complexity of the matter, time spent as well as value of the subject matter.



11. Accordingly, I find that the applicable Order to be applied was that used by the trial court, Schedule 6 in the Advocates Remuneration Order, 2014 as the matter was filed in the High Court in 2017. In the circumstances, I find that the taxing master did not err in principle in assessing the instructions fees awarded in its ruling of 19th May 2021 and therefore I find no reason to interfere with the same.
12. The upshot of the above is that the Chamber Summons dated 19.5.2021 is incompetent. It also lacks merit. The same is hereby dismissed. Each party to bear own costs of the application.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 30TH DAY OF JULY, 2024.

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S.M. GITHINJI

JUDGE

In the Presence of; -

1. Mr S.M.Kimani for the Objectors
2. Nyamae & Co. Advocates for the Applicants – absent

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S.M. GITHINJI

JUDGE

30/7/2024

