



**MAO Advocates, LLP v Tulsi Construction Limited (Miscellaneous Application E390 of 2023) [2024] KEHC 10230 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10230 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E390 OF 2023**

**PM MULWA, J  
AUGUST 15, 2024**

**BETWEEN**

**MAO ADVOCATES, LLP ..... APPLICANT**

**AND**

**TULSI CONSTRUCTION LIMITED ..... RESPONDENT**

**RULING**

1. Before the Court is the applicant's Chamber Summons dated 3<sup>rd</sup> August 2023, brought under Paragraph 11 (2) of the *Advocates (Remuneration) Order*, seeking the following orders:
  1. That the decision/Ruling of the Taxing Officer delivered on 28<sup>th</sup> July 2023 on the Advocate Applicant's Advocate-Client Bill of Costs dated 17<sup>th</sup> May 2023 taxing the said Bill at Kshs. 170,507.70/= and awarding instruction fees of Kshs. 75,000/=, be set aside, vacated, and/or reviewed in respect of the instruction fees only.
  2. That this Honourable Court be pleased to remit the Applicant's Bill of Costs dated 17<sup>th</sup> May 2023 for reconsideration/re-taxation by a different Deputy Registrar with appropriate directions in respect of item number 1 thereof, the taxing officer having committed errors of principle pertaining to the award of instruction fees.
  3. That in the alternative and without any prejudice to the foregoing orders, this Honourable Court be pleased to assess the costs payable to the Applicant Advocate by the Client Respondent as instruction fees.
2. The application is supported by the grounds on its face, the supporting affidavit sworn by Advocate Abdirizak Roba on even date and written submissions dated 23<sup>rd</sup> November 2023. The applicant contended that it filed the Bill of Costs dated 17<sup>th</sup> May 2023 seeking Kshs. 9,286,719.11/- from the



- client/ respondent as costs for instructions in Civil Suit No. 241 of 2019 to take over the conduct of the matter from AGN Kamau Advocates and represent the respondent in a suit against Riverside Place Limited seeking, inter alia, the registration of an inhibition against the suit property, being LR No. 11785/1- Proposed Riverside Place until the determination of arbitral proceedings.
3. That the applicant had sought instruction fees of Kshs. 5,311,606.96/= calculated from the value of the subject matter, taking into account time taken, the importance of the matter to the Client, the volume of documentation perused and prepared, and the complexity of the issues raised.
  4. That through a ruling of 28<sup>th</sup> July 2023, the Hon. S. Bett, Deputy Registrar of this Court, taxed the said Bill at Kshs. 170,507.70/- and taxed instruction fees at Kshs. 75,000/= under Schedule 6 (1) of the Advocates' Remuneration Order under "other matters"; and that in doing so, the taxing officer applied the wrong provisions of Schedule 6 of the Advocates Remuneration Order, 2014 and committed an error of principle by awarding manifestly and grossly low instruction fees as to justify interference by the Court.
  5. Further that the taxing officer committed an error of principle by ignoring the value of the subject matter of the suit giving rise to the bill, being Kshs. 364,496,958.73/-; that instruction fees are calculated from the value of the subject matter of a suit, the latter of which is determined either from pleadings, judgment, or settlement; hence the value of the subject matter having been apparent from the pleadings in Civil Suit No. 241 of 2019 from which the bill arose, the taxing officer erred in principle by failing to calculate the instruction fees from it.
  6. The applicant further contended that the taxing master erred in principle by finding and holding, without any evidence, that the applicant's instructions in the matter from which the bill of costs emanates were limited to filing an application seeking the registration of an inhibition against the suit property and that the same did not extend to prosecuting the plaint or the entire suit, thereby considering irrelevant factors.
  7. It relied on the propositions that once a party instructs an Advocate, they give the Advocate the authority to represent them until the conclusion of the matter or until the Advocate's services are formally terminated by them and that instruction fees are an independent and static item which is charged only once and is not affected or determined by the stage at which the suit has reached; that full instruction fee is earned by an Advocate upon instruction by a Client and once a defence, response, or reply is filed and served.
  8. In opposing the application, the respondent filed a replying affidavit sworn by Suresh B. Patel on 7<sup>th</sup> December 2023 together with written submissions of the same date. The key depositions were that the applicant has not laid a basis to warrant the Court's interference with the taxing officer's decision in that Nairobi HCCCOM No. 241 of 2019 (formerly ELC 509 of 2018), was commenced vide plaint drafted by the firm of M/S AGN Kamau Advocates filed contemporaneously with an application for an inhibition over and in respect of LR No. 11785/1, the subject of arbitration proceedings; that the applicant's instructions were to file written submissions in support of the application and that thereafter, the applicant applied to cease acting which was allowed and thereafter, the applicant filed the subject bill of costs.

### **Analysis and Determination**

9. I have considered the application, the grounds in support and opposition as well as the respective submissions. The issue for determination is whether the applicant has made out a case for the setting aside of the taxation ruling of 28<sup>th</sup> July 2023.



10. The parameters for consideration in determining whether to set aside a taxation decision were set out by the Court of Appeal in *Peter Muthoka & Anor v Ochieng & 3 Others* [2019] eKLR, as follows:

“It is not lost to us, as we address that single issue, that matters of quantum of taxation properly belong in the province and competence of taxing masters. They fall within their discretion and so the High Court upon a reference will be slow to interfere with them. It is not a wild and unaccountable discretion, however, because it is at its core and by definition a judicial discretion to be exercised, not capriciously at a whim, but on settled principles. When it is shown that there was a misdirection on some matter resulting in a wrong decision, or it is manifest from the case as a whole that the discretion was improperly exercised, resulting in mis-justice, then the decision though discretionary may properly be interfered with.”

11. The applicant argued that the taxing officer applied the wrong provisions of Schedule 6 of the *Advocates Remuneration Order*, 2014 and committed an error of principle by awarding manifestly and grossly low instruction fees to justify interference by the Court.

12. In the impugned ruling, the taxing officer made the following observation:

“The advocate represented the client by applying to seek an inhibition to be registered against the suit property until arbitration proceedings were concluded. In (sic) concur with the respondent that the application was interlocutory in nature and did not determine the suit in any way. It was a simple application to ensure the suit property was protected until arbitration was concluded. Item 1 is taxed at Kshs 75,000 under schedule 6 under other matters...”

13. I have perused the applicant’s bill of costs dated 17<sup>th</sup> May 2023. I note that the particulars under Item No. 1 were as follows:-

“To taking instructions to act for the Client (Tulsi Construction Ltd) in this matter in which the Client was seeking inter alia, an order for inhibition to be registered against the Defendant’s property designated as LR No. 11785/1 Proposed Riverside Place until such time as the arbitral proceedings have been compromised, settled, terminated, or determined by an order of the Court.”

14. From the foregoing, it is clear that the applicant’s instructions were limited to representing the respondent in its interlocutory application for an inhibition to be registered against the suit property until arbitration proceedings were concluded. It is also clear that the taxing officer took this into account in her decision. In my view, the taxing officer was correct to rely on “other matters” under Schedule 6 of the ARO. Therefore, I find that the applicant has not demonstrated that the taxing officer did not take into account a relevant factor in coming to her decision, to warrant interference by this Court.

15. Consequently, the application dated 3<sup>rd</sup> August 2023 is without merit and is dismissed with costs to the respondent.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF AUGUST 2024.**

.....

**P. MULWA**



## **JUDGE**

In the presence of:

Mr. Abdirazak for Advocates/Applicant

N/A for Respondent

Court Assistant: Lilian

