



Rachier & Amollo LLP v Noble Gases International LLP (Miscellaneous Civil Application E117 of 2022) [2024] KEHC 10233 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E117 OF 2022**

PM MULWA, J

AUGUST 15, 2024

BETWEEN

RACHIER & AMOLLO LLP APPLICANT

AND

NOBLE GASES INTERNATIONAL LLP RESPONDENT

RULING

1. Before the court is the Advocate's Chamber Summons application dated 1st July 2022 filed inter alia pursuant to paragraph 11 of the Advocates Remuneration Order 2009.
2. The advocate prayed for an order to set aside/vacate the decision of the taxing master delivered on 30th June 2022 on item(s) 1 and 2 in the bill of costs dated 4th February 2022 and an order to have the said items taxed afresh.
3. The application is based on the grounds that the advocate was on record for the respondent in the matter filed before the Tax Appeals Tribunal (hereinafter the tribunal) which had delivered a judgment setting aside a VAT assessment of Kshs. 274,152,960.00 and Corporation Tax of Kshs. 19,365,227.00 which had been demanded from the client. The tribunal only confirmed the Objection decision of Kshs. 198,147,222.00.
4. The applicant filed its bill of costs dated 4th February 2022 and argued that the taxing master only focused on the Corporation Tax of Kshs.19,365,227.00 as the value of the subject matter while neglecting to consider the VAT and Objection decision which were disputes before the tribunal.
5. The advocate contended that the taxing master erred in arriving at the instruction fee of Kshs. 283,252.00 and prayed to have the instruction fees and getting up fees forming item 1 in the bill of costs taxed afresh.



6. In opposition, the client filed a replying affidavit sworn on 15th August 2022 by its director, Jaspal Singh Nyottah.
7. He averred that the subject value of a suit for purposes of taxation shall be considered to be judgment value awarded at the conclusion of the suit which was the case with regard to the subject bill of costs. That the instant application lacked merit as it based the advocate's fee note on the initial amounts demanded by the Commissioner of Domestic Taxes yet the matter was concluded vide the tribunal's judgement of 4th June 2021.
8. The client contended that under the Advocate Remuneration Order, getting up fees are allowed but the power to tax it off the bill of costs by the taxing master is discretionary. That the taxing master considered all the pleadings and facts pertaining to the subject suit before arriving at the decision to tax off the getting up fees in the bill of costs.
9. The client's director averred that the instant application is an attempt by the advocates to unjustly enrich themselves as the subject of the suit was not as complex as they had portrayed and prayed to have the application dismissed with costs.

Analysis and determination

10. The court has considered the pleadings as well as the written submissions by the advocate dated 6th July 2023 and those by the client dated 18th September 2023.
11. No doubt the advocate represented the client in tax appeal proceedings before the Tax Appeals Tribunal where he filed a memorandum of appeal on behalf of the client challenging a VAT assessment of Kshs. 274,152,960.00, a demand for Corporation Tax of Kshs. 19,365,227.00 and an Objection decision dated 31st May 2016 for the total sum Kshs. 198,147,222.00.
12. The tribunal delivered its judgement on the appeal on 4th June 2021 whereby it upheld the Objection decision dated 31st May 2016 but set aside the VAT assessment and Corporation Tax demand.
13. The advocate filed its bill of costs dated 4th February 2022 claiming a sum of Kshs. 7,951,127.505. The taxing master taxed the bill of costs to a total sum of Kshs. 499,074.96 having taxed off an amount of Kshs.7,452,052.54.
14. The advocate disputes the amount the taxing master based her decision as the value of the subject matter for the purpose of calculating instruction fees.
15. The approach in determining the value of the subject matter for purposes of determining instruction fees was clearly outlined by the Court of Appeal in the case of Peter Muthoka & another v Ochieng & 3 others [2019] eKLR, thus:

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgement, it is the pleadings that form the basis for determining subject value. Once judgement has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgement does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.”
16. In the instant case, the Tax Appeals Tribunal in its judgement entered on 4th June 2021, gave the following orders:



- i) The Respondent's Objection Decision dated 31st May 2016 for Corporation Tax is hereby upheld.
 - ii) The VAT assessment No.xxxxxx dated 13th May 2016 is hereby set aside.
 - iii) Corporation Tax demand as contained in the Respondent's letter dated 11th October 2019 amounting to Kshs.19,365,227.00 is hereby set aside.
 - iv) Each party to bear its costs."
17. Consequently, the value of the subject matter is ascertainable from judgment of the tribunal and not the pleadings filed by the parties. Although the tribunal set aside the Commissioner's tax demands, it upheld the demand in the objection decision for an amount of Kshs.198,147,222. This in my view formed the value of the subject matter for the purpose of calculating the instruction fees.
18. The taxing master erred in finding that the subject matter value was Kshs.19,365,227.00 as this amount was Corporation Tax as demanded by the Commissioner of Domestic Taxes from the client. The tribunal set aside this demand.
19. It is my finding that the taxing master's ruling and reasons for taxation are faulty in terms of item 1 of the instruction fees and the same ought to be taxed afresh in conformity with the correct value of the subject, being Kshs. 198,147,222.00.
20. The application dated 1st July 2022 succeeds to the extent that item no. 1 in the bill of costs dated 4th February 2022 is to be taxed afresh with the value of the subject matter as hereinabove determined.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF AUGUST 2024.

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P. MULWA

JUDGE

In the presence of:

Ms. Masara h/b for Mr. Wakwaya for applicant

Mr. Kariithi for respondent

Court Assistant: Lilian

