



REPUBLIC OF KENYA



China Qignjian International Group (K) Limited v Wamutu t/a Taifa Auctioneers (Miscellaneous Application E1096 of 2023) [2024] KEHC 13190 (KLR) (Civ) (31 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13190 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E1096 OF 2023
JN MULWA, J
OCTOBER 31, 2024**

BETWEEN

CHINA QIGNJIAN INTERNATIONAL GROUP (K) LIMITED APPLICANT

AND

DAVID WANDERI WAMUTU T/A TAIFA AUCTIONEERS RESPONDENT

RULING

1. By Chamber Summons dated 17/11/23, the Applicant sought orders:-
 - a. That this Honourable Court be pleased to set aside the Taxing Officer's Ruling delivered on 8/4/2022 in relation to Respondent's Bill of Costs in Misc App No. E1772 OF 2021- David Wanderi Wamutu T/A Taifa Auctioneers -Vs- China Qingjian International Group (Kenya) Limited as it relates to the Respondent's Bill of Costs dated 22/11/2021.
 - b. That this Honourable court be pleased to adjust the figure, re-assess the fees due and find that the sum due to the Respondent in the taxation cause is as presented in the Applicant's submissions dated 25/1/2022.
 - c. That costs of this application be provided for.
2. The chamber summons is premised upon Rule 55 (5) of the Auctioneers Rules and further supported by the affidavit sworn on 17/11/2023 by QU Gaolei, the General Manager of the Applicant herein
3. In opposition, the Respondent filed grounds of opposition dated 26/4/2024.
4. As a brief background, on 22/11/2021 the Respondent herein filed an Auctioneer's Bill of Costs amounting to Kshs. 165, 322.11/= upon the Respondent submissions dated 25/11/2022. Upon



consideration, The Taxing Master on 8/4/2022 taxed the bill of costs at Kshs. 136,322.11/= and a certificate of taxation accordingly issued.

5. The Applicant being dissatisfied with the ruling filed this reference praying this court to set aside the ruling and re-assess the fees due as per their submissions dated 25/1/2022, on grounds that the Taxing Officer erred in principle by misdirecting himself on his discretion and awarding a fee that is manifestly excessive.
6. The Respondent in the grounds of opposition dated 26/4/2024 contended that the application lacks legal basis, is misguided and an abuse of the court process.

Analysis and Determination

7. For a party to succeed in a reference, it is required to show that its case meets the principles set in jurisprudence for interference with the exercise of discretion by the Taxing Master. These principles were succinctly enunciated in *First American Bank of Kenya v Shah and Others* [2002] E.A.L.R 64 at 69 in which Ringera J (as he then was) stated as follows:-

“This court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors... some of the relevant factors include the nature and importance of the cause or matter, the amount or value of this subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial judge...not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him...”

8. Likewise in the case of *PZ Cussons East Africa Limited v Kenya Revenue Authority*, (supra), the Judge cited the decision of the Court of Appeal in *Thomas James Artur v Nyeri Electricity Undertaking* [1969] EA 64 at page 69 that: -

“Where there has been an error in principle, the court will therefore interfere, but questions solely of quantum are regarded as matters with which the Taxing Officers are particularly fitted to deal and the court will interfere only in exceptional circumstances.” (emphasis added)

9. The Court of Appeal in the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board NRB CA Civil Appeal No. 220 of 2004* [2005] eKLR stated that:

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

10. Additionally, in the case of *Republic –Vs- Minister for Agriculture & 2 Others* [2006] KLR it was held that;

“.....Taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will therefore not interfere with the award of a taxing officer particularly where he is an experienced officer.”



11. The Applicant urges this court to set aside the impugned ruling and re-assess the fees due as per their submissions dated 25/1/2022 on grounds that the Taxing Officer erred in principle by misdirecting himself on his discretion and awarding a fee that is manifestly excessive.
12. The Applicant in its submissions dated 25/1/2022 contended that there was no Valuation Report to support the assessment of the decretal sum and that item no.3, which charges the amount of Kshs.17,012.12 as the commission to recover the decretal amount of Kshs. 240,242.46 is contrary to Part II of the Fourth Schedule of the Auctioneers Rules which should be Kshs. 7,012.12/=.
13. It further submits that Item Nos. 5, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 are not provided under Part II of the Fourth Schedule and therefore should not be allowed. It relies on the case of Co-operative Bank of Kenya Ltd v Jeofrik N. Muinde t/a Kimu Auctioneers (2019) eKLR.
14. As clearly stated in the cases cited above, interference with a taxing Master's discretion on matters of taxation is not just stating that the Taxing Master erred in principle. These matters of taxation of bills of costs are better left with the (Masters) who have the expertise based on experience. This goes for mathematical exercise and expertise. Clearly, unless in very exceptional circumstances, a judge lacks such expertise and experience.
15. For the going, the Bill of costs dated November 22, 2021 and taxed on 8/4/2022 is remitted back for fresh taxation before another Deputy Registrar/Taxing master.
16. These orders shall apply to Misl. Application No. E1097 of 2023.

It is so ordered.

DATED SIGNED AND DELIVERED IN NAIROBI THIS 31ST DAY OF OCTOBER, 2024.

JANET MULWA
JUDGE

