



Muri Mwaniki & Wamiti Advocates v Sanlam General Insurance Limited (Miscellaneous Application 271 of 2019) [2024] KEHC 16734 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEHC 16734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION 271 OF 2019
NIO ADAGI, J
OCTOBER 31, 2024**

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES APPLICANT

AND

SANLAM GENERAL INSURANCE LIMITED RESPONDENT

RULING

1. Before me is a Chamber Summons application dated 3rd November 2021 by the Applicant seeking orders under paragraph 11(1) & (2) of the Advocates Remuneration Order THAT:-

1. this Honourable Court be pleased to set aside the ruling of the Deputy Registrar Hon. Analo delivered on 5th August 2021 herein and any resultant Certificate of Taxation to the extent that it relates to the reasoning and determination pertaining to taxation of the following items in the Advocate/Client Bill of Costs dated 17th May 2019:

- a) Item 1
- b) Items 2-7, 10-16, 19-29, 32-40, 43-45, 48-53, 59-64
- c) Items 8,18,31,42,47,56,58,72,74,79,81,83,85,87,89,93,95
- d) Items 17,30,41,46,55,57
- e) Items 71,73
- f) Items 78,88,92,94
- g) Items 80,82,84,86
- h) Item 97



2. this Honourable Court be pleased to tax the items of the Bill of Costs dated 17th May 2019 set out in 1 (a)-(h) above.
 3. in the alternative to Prayer 2 above, this Honourable Court do remit the items of the Bill of Costs dated 17th May 2019 set out in 1(a)-(h) above to another Taxing Officer for taxation with direction on the taxation.
 4. the Advocate/Applicant be awarded costs of this application.
2. The grounds in support of the application are as follows:-
- a) The Learned Taxing Officer erred in law and misdirected himself in principle in holding that Schedule 7 of the Advocates (Remuneration) Order 2006 applied to the taxation of Bill of Costs dated 17th May 2019 when the Advocate/Applicant filed, contemporaneously with the Bill of Costs, a Notice of Election dated 17th May 2019, electing under paragraph 22 of the Advocates (Remuneration) Order ("the Order") to charge the Bill of Costs under Schedule V, Part II of the Order.
 - b) The Learned Taxing Officer erred in law and misdirected himself in principle in taxing Item 1 relating to instruction fees by finding it is not proper to increase the instruction fees by a half when as provided under Paragraph 22 (2) of the Advocates Remuneration Order not to charge less than the appropriate schedule, recourse to for equivalent instructions fees in Schedule 7 of the Order would require, per Part B of the said Schedule 7, that the minimum instruction fees for advocate and client costs will be the party and party costs prescribed, or as ordered by a court or agreed upon by the parties increased by one-half or 50%.
 - c) The Learned Taxing Officer erred in law and misdirected himself in principle in taxing off Items 2-7, 10-16, 19-29, 32-40, 43-45, 48-53, 59-64 relating to drawings, making copies, perusals, attendance at the court registry and letter to client on the premise that they are not provided for under Schedule 7 of the Order of 2006 when the Advocate/Applicant herein filed a Notice of Election electing to charge the Bill of Costs under Schedule V, Part II of the Advocates Remuneration Order where all the above mentioned items are provided for and were accordingly drawn in the Bill of Costs.
 - d) The Learned Taxing Officer erred in law and misdirected himself in principle in taxing off Items 8,18,31,42,47,56,58,72,74,79,81,83,85,87,89,93,95 of the Bill of Costs which relate to journeys from home yet the items were unopposed and in any event, the Learned Taxing Officer could have directed under Paragraph 13A of the Advocates Remuneration Order for the production of such documents necessary to make a determination on this. Further, the Learned Taxing Officer ought to have taken judicial notice that the Applicant's firm was based in Nairobi from where the journey would be made to court in Machakos, covering the time indicated in the said items described in terms of hours as is required for Journeys from home under Schedule 5 of the Advocates Remuneration Order.
 - e) The Learned Taxing Officer erred in law and misdirected himself in principle in taxing Items 17,30,41,46,55,57 relating to attendance for hearing of application, ruling, judgment, mentions and hearing under Schedule 7 of the Advocates Remuneration Order of 2006 when the same ought to have been taxed under paragraph 3 of Schedule 5 of the Advocates Remuneration Order of 2009.
 - f) The Learned Taxing Officer erred in law and misdirected himself in principle in taxing Items 71 and 73 relating to attendance at the registry at Kshs.500 under Schedule 7 of the Advocates



Remuneration Order of 2006 when the same ought to have been taxed under paragraph 3 of Schedule 5 of the Advocates Remuneration Order of 2014.

- g) The Learned Taxing Officer erred in law and misdirected himself in principle in failing to tax items, 78, 88, 92 and 94 when the same ought to have been taxed under paragraph 3 of Schedule 5 of the Advocates Remuneration Order of 2014.
 - h) The Learned Taxing Officer erred in law and misdirected himself in principle in taxing Items 80,82,84 and 86 relating to attendances before DR at Kshs.1400 under Schedule 7 of the Advocates Remuneration Order of 2006 when the same ought to have been taxed under paragraph 3 of Schedule 5 of the Advocates Remuneration Order of 2014.
 - i) The Learned Taxing Officer erred in law and misdirected himself in principle in taxing Item 97 relating to VAT by applying it only on the instruction fees yet VAT is chargeable under the Value Added Tax Act, 2013 on the advocates fees in full.
 - j) The Learned Taxing Master erred in principle by failing to exercise his discretion properly and made manifest error in principle resulting in the grant of grossly deficient award of Kshs.43,277/=.
 - k) It is in the interest of justice that the Learned Taxing Officer's taxation in the ruling of 5th August 2021 be set aside and that this Honourable Court be pleased to tax the Bill of Costs or remit it to another Taxing Officer for taxation.
3. The application is further supported by the affidavit of Mr. Martin G. Mwaniki, a partner in the applicant's firm sworn on 3rd November 2021.
 4. The Respondent did not file a response to the Applicant s' bill of costs.
 5. Mr. Mwaniki depones that Taxing Officer erred in law and misdirected himself in principle in holding that Schedule VII of the Advocates (Remuneration) Order 2006 applied to the taxation of Bill of Costs dated 17th May 2019 when the Advocate/Applicant filed, contemporaneously with the Bill of Costs, a Notice of Election dated 17th May 2019, electing under paragraph 22 of the Advocates (Remuneration) Order ("the Order") to charge the Bill of Costs under Schedule V, Part II of the Order.
 6. Paragraph 22 of the Advocates (Remuneration) Order provides as follows:-

“In all cases in which any other Schedule applies, an advocate may, before or contemporaneously with rendering a bill of costs drawn as between advocate and client, signify to the client his election that, instead of charging under the Schedule, his remuneration shall be according to the scale applicable under the other Schedule”
 7. . I have seen the Applicant's Notice of Election dated 17th May 2019 which was filed together with the Bill of Costs dated 17th May 2019 indicating that the Applicant complied with that paragraph.
 8. In Aldrin Ojiambo t/a Ojiambo & Co. Advocates v Mohamedraza Hussein Jagani & Another Misc. Cause 320/2005 (U.R.) at Milimani, Ochieng J correctly remarked that:-

“The paragraph speaks for itself clearly....it is not open to the taxing officer to make an election to apply Schedule V. The right to make an election vests in the advocate”
 7. In his ruling and order dated 22nd October 2021, the Learned Taxing Officer states as follows:-

“...the applicable Advocates Remuneration Order is for 2006 Schedule 7



....the trial court awarded Kshs.132,200/= which fact has not been controverted and the said award attracts instruction fees of Kshs.25,200/=....the Applicant urged the court to increase the instruction fees by 50% under paragraph 1(d) of the ARO

....Having considered the cited authorities, and having regard to the subject of the suit and general conduct of the matter, I do find that this is not a proper case for increasing the instructions fees by half consequently the said item is taxed off accordingly.

...All items dealing with drawings, making copies, perusals, attendances at registry, letter to client are taxed off as the ARO does not provide for the same in the subordinate court

....All items dealing with journey from home are taxed off as they are not supported by documents

... All attendances for hearing of application, ruling, judgment, mentions being necessary attendances are taxed at Kshs.1,000/=

....attendance at the registry in regard to the bill of costs at the high court are each taxed at Kshs.500/= while journey to court are taxed off as they are not supported by evidence

8. From the above, it appears that the Learned Taxing Officer was wholly unaware that together with the Bill of Costs the Applicant also filed the letter dated 17th May 2019 signifying the election and in the Bill of Costs itself, the Applicant again specifically put in the heading “Advocates Bill of Costs under Schedule V”
9. Clearly the Applicant complied with paragraph 22(1) of the ARO and the Taxing Officer like in Aldrin Ojiambo case (supra) acted in error which error is so substantial that having acted on the wrong principle, the proceedings thereafter were all conducted wrongly to the prejudice of the Applicant.
10. Since it is not good practice for the High Court to assume the jurisdiction which is one of discretion given to the Taxing Officer, this court will order that the Bill of Costs dated 17th May 2019 be re-taxed by any other Taxing Officer of this court exercising discretion under Schedule V of the Advocates (Remuneration) Order and for the ends of justice to be met, the Respondent will also have a hearing.
11. The costs of the Reference are awarded to the Applicant
12. It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY AT MACHAKOS ON 31ST OCTOBER 2024

NOEL I. ADAGI

JUDGE

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