



**Tanda Agent Limited v CNK Advocates LLP (Miscellaneous Application E482 of 2024)
[2024] KEHC 13950 (KLR) (Commercial and Tax) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E482 OF 2024**

**BK NJOROGE, J
OCTOBER 31, 2024**

BETWEEN

TANDA AGENT LIMITED APPLICANT

AND

CNK ADVOCATES LLP RESPONDENT

RULING

1. This Ruling is in respect of a reference to the Court from the decision of a Taxing Master Hon. Chembeni L. Adisa dated 30/5/2024. It is presented by way of a Chamber Summons dated 10/6/2024. It is supported by an Affidavit of Geoffrey Mulei Mutia sworn on 10/6/2024 with annexures. The Chamber Summons is brought under the provision of Sections 1A, 3B, 3A of the *Civil Procedure Act*, regulation 11(c) of the *Advocates Remuneration Order* and all the inability provisions of the Law.
2. The Application is opposed by the Defendant who has filed a Replying Affidavit of Benedict Nzioki sworn on 27/9/2024.

Background facts.

3. The Respondent is a Law Firm. It was engaged by the Applicant sometimes on or about 20/2/2023. The instructions were to provide legal services related to the increase of the Applicant's nominal capital by Kshs.4,900,000/-. The Respondent carried out the instructions. The Respondent presented a Bill of costs dated 14/12/2023 for settlement. In it, the Respondent claimed Kshs.2,952,360/-. The Bill was opposed by the Applicant who is the client. The same was ultimately taxed at Kshs.501,610/-. A sum of Kshs.2,450,750/- was taxed off. The Applicant has filed his response objecting to the taxation of costs. It seeks a further reduction of the fees or an order that the bill be retaxed again.
4. This matter was flagged down for the Rapid Result Initiative (RRI) for the month of October, 2024.



5. The Applicant has filed its written submissions dated 15/8/2024 with authorities. The Respondent has equally filed their written submissions dated 27/9/2024 with authorities.
6. The Court has perused the respective submissions and considered the same. Further, the parties' advocates appeared before the Court on 01/10/2024 and orally highlighted their submissions.

Issues for determination

7. The Court has perused the Reference filed as well as the response and the respective submissions. The Court is of the view that two issues arising ought to dispose of the reference.
 - a. Whether the reference is merited?
 - b. What orders ought to be lie from the reference

Analysis

8. Section 11 of the *Advocates (Remuneration) Order*, General Matters Cap 6 of the Laws of Kenya states as follows;

“ 11 objection to decision on taxation and appeal to the Court of Appeal.

1. Should any party object to the decision of the taxing officer, he may within Fourteen days after the taxation give notice in writing to the taxing officer of the items of taxations to which he objects.
2. The taxing officer shall forthwith record and forward to the Objector the reasons for his decision on these items and the Objector may within Fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”

9. In *Machira and Company Advocates -vs- Mugugu* [2002] EA 248, the Court has restated the Law as follows;

“Secondly as I understood the practice relating to taxation of bills of costs, any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to the Judge in accordance with paragraph 11 of the *Advocates Remuneration Rules*.”

10. A perusal of the Chamber Summons dated 10/6/2024 satisfies the Court that the Applicant has properly filed a reference before this Court.
11. A reference is in essence an Appeal to this Court against the decision of the Taxing Officer. The Court will therefore exercise its appellate jurisdiction. It will therefore re-look, re-analyse or re-evaluate the pleadings and submissions made by the parties before the Taxing Officer. The Court will reach its own independent conclusion.
12. The Court will therefore proceed to analyse the two issues framed for consideration in seriatim as follows;
 - a. Whether the reference is merited?
13. The Applicant challenges the Ruling on Costs on 3 facets.



- i. Whether the Taxing Officer erred in principle in awarding an excessive amount of Kshs.500,000/- as instruction fees?
 - ii. Whether the Taxing Officer erred in principle in awarding attendances?
 - iii. Whether the Taxing Officer erred in principle in relying on documents filed without leave of the Court and out of time?
14. The Applicant submits that sum of Kshs.500,000/- awarded for instruction fees was excessive. That the work entailed drafting of a two (2) page agreement, notice of increase in nominal capital and statement of increase in nominal capital. The Applicant proposes a sum of Kshs.60,000/- as instruction fees. They rely on the cases of *Premchand Rakbanchand Limited & Another -vs Quarry Services of East African Limited and Another* [1972] E.A 162, *First American Bank of Kenya -vs- Shah and others* [2002] E.A 34 and *Joreth Ltd -vs- Kigano & Associates* [2002] 1 E.A 92.
 15. The Applicant also relies on *Kamunyori & Company Advocates -vs- Development Bank of Kenya Limited* [2015] Civil Appeal 206 of 2006. That when a Taxing Officer fails to currently assesses the correct subject matter of the suit for purposes of taxation, this is an error of principle. As such this Court should interfere the Taxing Officers decision.
 16. It was also argued that attendances should not have been awarded as they were not supported by documentary evidence of receipts.
 17. Lastly, it was argued that the Respondent filed a response to the Applicant's objection to the Bill of Cost. This document was filed before the Taxing Officer on 15/5/2024. By this time the matter was fixed for ruling on 17/5/2024. In deed the Court did proceed to deliver a ruling on 17/5/2024. The Applicant's complaint is that these documents were filed in Court without leave. That the Applicant was denied an opportunity to respond to the same. That this was an ambush, as the same documents have never been served upon the Applicant's advocate up to the date of the hearing of the Application.
 18. The Applicant therefore prays that the Bill of Costs be re-taxed or sent back to the Taxing Master for taxation with appropriate directions. Lastly the applicant seeks costs.
 19. The Respondent on the other hand isolated only one issue for submission.

i. Whether the Applicant has the requisite locus standi to bring this application?

20. To the Respondent, the Taxing Officer correctly exercised her jurisdiction and applied the correct legal principles in taxing the bill of costs.
21. It was submitted that there was an initial agreement for fees of USD 5,000 which the Applicant failed to honour. That since this was not a litigation matter, the Taxing Officer had a duty to look at other factors e.g. the nature of the transactions, the complexity involved and the kind of expense that went into the transaction. The Respondent submitted on the uniqueness of the Respondent as a Law Firm, its structure and expertise as well as reputation in delivering on the instructions given.
22. It was submitted that all these were relevant factors to guide the Taxing Officer. The Court was referred to *Republic -vs- Minister of Agriculture & 2 others exparte Samuel Muchiri W'Njuguna* [2006] eKLR. Also, the case of *Premchand Raichand Limited & another -vs- Quarry Services East Africa Limited and another* [1972] E.A 162. This is on the applicable principles when the Court will interfere with the decision of a Taxing Master. The Court has also been referred to *First American Bank of Kenya -vs- Shab and others* [2002] eKLR 64, lastly the decision of *Peter Mutuku & another -vs- Odieny & 3 others* [2019] eKLR.



23. The Court has considered the nature of the transaction rendered by the Respondent. It was a commercial transaction and not the ordinary civil dispute. It involved increasing the share capital of the Applicants as well as the restructuring agreements.
24. The Respondent prepared a Bill of Costs dated 14/12/2023. It sought instruction fees of Kshs.1,500,000/-. The Respondent in its objection dated 26/4/2024 proposed a sum of Kshs.60,000/-. There is no explanation why Kshs.60,000/- is a more appropriate figure than that stated by the Respondent in its bill.
25. In the reference it has been submitted that the transaction involved the drafting of just a few mere documents. This Court is not persuaded that the number of documents would be indicative of the value attached to a transaction. In a routine conveyance, the Advocate may only draw a sale agreement, a transfer and a limited number of emails. The number or length of documents themselves may not be the sole basis of charging fees. The value of the transaction is one of the key guiding points. There a conveyance of Kshs.5,000/= will attract less fees than a conveyance of 50,000,000/= though the documents prepared appear the same in number, length and contents.
26. The intrinsic value of the transaction itself to the party is relevant. The expertise of the law firm and the experience of the Advocate handling the transaction will be relevant in charging fees.
27. The Taxing Officer considered the nature of the transaction and the documentation prepared. It proceeded to tax the instruction fees based on Section 5 part II (1).

“Instruction fees is assessed having regard to the care and labour required the work and the length of pages to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, complexity of the matter and all other circumstances of the case.”
28. The Taxing Officer considered the nature or importance of the matter, the work done as evidenced by the bundle of documents filed and found a sum of Kshs.500,000/- as reasonable. A sum of Kshs.1,000,000/- was taxed off.
29. The Court relies on the case of *Premachand Raichand Limited and another -vs- Quarry of Services of East Africa Limited & another* [1972]. It also relies on *Republic -vs- Minister of Agriculture & 2 others., exparte Samuel Muchiri W’njuguna* [2006] eKLR. Taxation is not a mathematical exercise; it is entirely a matter of opinion based on experience. This Court will be slow to interfere with the award of the Taxing Master where she is an officer of great experience, merely because we think that the award is too low or too high. We will only interfere if we are convinced that it will cause an injustice to other party. The Court will also interfere when it is shown that the decision was based on an error of principle and it was manifestly excessive.
30. On perusal of the documents attached to the response shows various agreements drawn as well as other documentation. This was not an ordinary and routine transaction.
31. The award of instruction fees of Kshs.500,000 is reasonable in the circumstances.
32. As to attendances, the Respondent had drawn a bill seeking Kshs.100,000/- for each attendance. The same was allowed at kshs.2,000/- per attendance and a sum of Kshs.450,000/- taxed off.
33. The Taxing Office applied schedule 5(3) correctly.
34. It is argued that there was no proof by way of receipts. The Court is not convinced that receipts are required to show that the Respondent attended to the Government Offices stated.



35. The Applicant has not argued that the instruction were not carried out or that they were not carried out well.
36. The Court is not persuaded that the attendance costs award are not justified or that they are excessive.
37. Lastly, there is the issue of the documents filed by the Respondent out of time, just before the Ruling date.
38. The Court should not be seen to condone late filing of documents or none compliance with directions that fast track a trial.
39. The Court notes that it is the Applicant who failed to file his objection to the bill of costs on time. It was given more time to comply.
40. A perusal of the Ruling on Taxation dated 30/5/2024 does not reveal that the taxiing officer relied or perused the documents complained off.

b. What orders ought to lie from the reference?

41. The Court is not pursued that it sought to interfere with the decision of the Taxing Officer. To the Court the exercise of discretion by the Taxing Officer was proper.

Determination

42. The Reference filed by way of a Chamber Summons dated 10/6/2024 lacks merit and the same is hereby dismissed with costs.
43. It is so ordered.

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

NJOROGE BENJAMIN. K

JUDGE

In the presence of: -

Mr. Onyani for the Applicant

Mr. Torotwa for the Respondent

Court Assistant Luyai

