



**Mwangi Keng'ara & Company Advocates v Baseline Logistics & Investment Company Limited & another (Miscellaneous Civil Application E262 of 2021) [2024] KEHC 16716 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16716 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E262 OF 2021  
BM MUSYOKI, J  
DECEMBER 20, 2024**

**BETWEEN**

**MWANGI KENG'ARA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**BASELINE LOGISTICS & INVESTMENT COMPANY LIMITED .... 1<sup>ST</sup>  
RESPONDENT**

**JOEL KAMAU KIBE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a reference from the decision of the taxing officer dated 19<sup>th</sup> June 2023. The said decision was on the applicant's bill of costs dated 13-04-2021 which was taxed at Kshs 5,493,451.84. Before the bill was prosecuted, the respondents raised an objection claiming that they had not retained the applicant. The taxing officer referred the matter to the Judge for determination of the issue of retainer. Honourable Justice Dorah Chepkwony dismissed the objection and referred the matter for taxation of the bill after finding that there was an advocate client relationship between the parties. As much as I can ascertain from the case tracking system, after the ruling by the Honourable Judge, the matter was mentioned before Honourable Mary Osoro on 15-02-2023, 22-02-2023, 24-02-2023 and 5-09-2023 for directions.
2. The rather short ruling which is being challenged in this reference was delivered on 19-06-2023 as follows;

‘This is a ruling on the advocate Bill of Costs dated 23-04-2021. The client had disputed issuing instructions but on 14-10-2022 the High Court ruled that there was indeed a client advocate relationship.



The clients had initially filed submissions in which they only disputed the issue of retainer and never opposed any other item. Since the issue of retainer had been established the court finds that all other items are reasonably drawn to scale and finds no reason to interfere. The Bill of Costs is taxed at Kshs 15,493.451.84/=.’

3. The above ruling was delivered in presence of Miss Kimani for the applicant and Mr. Nyaema for the respondent. On 19-06-2023, the then respondent’s advocates wrote an objection to the taxation and requested for the reasons for the ruling. The letter was uploaded in the court system on 3-07-2023. The respondents aver that the reasons for the ruling were never given but on 24-08-2023 their advocates received a copy of the ruling and proceeded to file the application on 31-08-2023.
4. As far as I can discern from the application and supporting affidavit of the 2<sup>nd</sup> respondent sworn on 28-08-2023, the respondents have filed this reference on the following grounds.
  - a. That the taxing officer erred in principle by finding that the bill was not opposed when they had actually filed objection and submissions in opposition to the same.
  - b. That after the ruling of the Judge, the taxing officer proceeded to tax the bill without giving directions thus denying them the right to be heard.
  - c. That the taxing officer erred in principle when she proceeded to tax the bill in lumpsum without analysing each item and giving reasons for doing so.
5. The applicant has opposed the application and averred that the respondents were given all the opportunities to file submissions and replies but they failed to do so. The applicant also contends that there is no error of principle which would entitle the respondent to orders for setting aside the taxation. The respondent has also raised the issue of competency of the application on grounds that it does not comply with paragraph 11(2) the *Advocates Remuneration Order* and its has been brought by way of notice of motion instead of chamber summons.
6. I will start with the issue of the competence of the application. It is true that the procedure provided for filing reference under the Advocates Remuneration Order is by way of chamber summons. The applicant has however brought the instant application by way of notice of motion. I take the position that unless a party has suffered or is likely to suffer prejudice by the manner in which proceedings have been commenced or there is a serious material departure from the rules of pleadings, the courts should not be so restrictive in the form of the pleadings. Article 159(2)(d) of *the Constitution* obligates the courts to dispense justice without undue regard to procedural technicalities.
7. It is common ground between the parties that the application before the court is a reference challenging the taxing officer’s decision dated 19<sup>th</sup> June 2023. The applicant has extensively replied to the issues raised in the application and made submissions on the substantive issues and in the circumstances, I see no prejudice caused or likely to be caused to the applicant by the fact that the application has been brought by way of a notice of motion.
8. The applicant has claimed that the application is incompetent because the respondent did not file an objection as contemplated in paragraph 11(1) of the Advocates Remuneration Order. The applicant acknowledges that the objection was filed but maintains that since the payment for it showed zero, it is a nullity. The respondents uploaded the objection to the system and it was not their business to assess filing fees. There are many documents which are categorized and accepted in the system without filing fees including the applicant’s own application dated 6<sup>th</sup> July 2023. In any event, there is no requirement in the Advocates Remuneration Order that the objection must be paid for. The objection may come in many ways including in form of a letter like in this matter as there is no statutory form for the same.



The request for reasons was done within the stipulated time and the application was filed within six days upon the respondents receiving a copy of the ruling although the request for reasons was not responded to. This ground is therefore unmerited and I overrule it.

9. It is trite law that a judge will not interfere with discretion of the taxing officer unless it is shown that the taxing officer applied wrong principles or made an error of principle or the amount is clearly inordinately excessive or too low. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* (2005) KECA 325 (KLR) the Court of Appeal held 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. In *Arthur v Nyeri Electricity Undertaking* [1961] EA 497, the predecessor of this Court said at page 492 paragraph I:

“where there has been an error in principle the court will 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 cases”.

An example of an error of principle is where the costs allowed are so manifestly excessive as to justify an inference that the taxing officer acted on erroneous principles-see *Arthur v Nyeri Electricity Undertaking* (supra) or where the taxing officer has over emphasized the difficulties, importance and complexity of the suit (see *Devshi Dhanji v Kanji Naran Patel* (No. 2), [1978] KLR 243.’

10. The respondents claim that they were not heard and the taxation was done without their participation thereby violating their constitutional right to a fair hearing. I have observed above that there were four appearances before the taxing officer before the ruling was delivered. I have seen affidavits of service for the mention dates of 15-02-2023 and 5-06-2023. If the respondent did not attend, the court cannot be accused of having denied them their right to be heard. Once a party has been given opportunity to be heard and chooses not to participate or attend the hearing, they cannot turn around and complain of having been condemned unheard.
11. The last issue which I need to consider is whether the taxing officer erred in principle or applied the wrong principle of taxation. The ruling produced above gives the only reasons for the taxation as that; the bill was reasonably drawn to scale, the issue of retainer had been resolved and that it was not opposed. In my opinion, these reasons were not enough for a taxing officer to tax a bill of that magnitude the way she did. In stating that ‘since the issue of retainer has been established the court finds that all other items are reasonably drawn to scale’, the court was openly insinuating that the Judge had settled the item for instructions fees. She did not address herself to that item but ‘all the other items.’ What the Judge resolved was whether there was retainer or not but not whether the contested item for instructions was due as drawn.
12. It is not enough for a taxing officer to state that a bill is not opposed and proceed to allow it as drawn. I am alive to the fact that it is not a must that a taxing officer must give analysis of each item of taxation as proposed by the respondents and that is why the Advocates Remuneration Order provides for request for reasons where a party intends to object to the decision on taxation. But the taxing officer must have reasonable justification for reaching a decision on the items and where reasons are not given after a request has been made and the same are not in the ruling, a judge will be justified to infer a breach of the established principles of taxation especially where the contested items are substantial. Stating that the bill was unopposed and items reasonably drawn to scale without giving a basis for a bill of the nature like in this matter is in my view an error of principle. Even where a bill of costs is prosecuted ex-parte the taxing officer is under an obligation to ensure that the items are charged to scale and give basis.



13. In addition to the above, I have formed an opinion that the taxed costs appear to be inordinately excessive. While I do not agree with the respondents' unfortunate proposal in their submissions that the advocate did clerical works as that would be demeaning of an advocate, I find the taxed costs not commensurate with the work done. I will not say more on this to avoid prejudicing subsequent proceedings.
14. In view of the above, I find that the taxing officer fell into error of principle and make the following orders;
- a. The ruling of the taxing officer dated 19-06-2023 and the resultant certificate of taxation dated 20<sup>th</sup> June 2023 are hereby set aside.
  - b. The applicant's bill of costs dated 13<sup>th</sup> April 2021 shall be placed before a taxing officer of this court other than Honourable M.N. Ososo for a fresh taxation.
  - c. There shall be no orders as to costs of the application.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER 2024.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mwangi for the applicant/advocate and Miss Arum holding brief for Musyoki Nzakyo for of the respondent/client.

