



REPUBLIC OF KENYA



Patrick Law Associates v Ruga (Sued as the 2nd administrator of the Estate of Ruga Gituku) (Miscellaneous Cause E124 of 2022) [2024] KEHC 16272 (KLR) (Family) (19 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16272 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CAUSE E124 OF 2022
EKO OGOLA, J
DECEMBER 19, 2024
IN THE MATTER OF THE ADVOCATES ACT
-AND-
IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT
BETWEEN
PATRICK LAW ASSOCIATES RESPONDENT
AND
JOYCE WANGECHI RUGA (SUED AS THE 2ND ADMINISTRATOR OF THE ESTATE OF RUGA GITUKU) APPLICANT

RULING

1. The application before this court is dated 25th August 2023. The applicant prays for the following orders:
 - a. That the cost of this application be provided for;
 - b. Spent;
 - c. That the honorable court be pleased to vacate and set aside in its entirety the Ruling and reasoning of the honorable Catherine Ng'ang'a, Deputy Registrar, dated and delivered on the 28th July 2023, taxing the Advocate-Client's Bill of Costs dated 20th June 2022, at Kshs. 7,866,870 and refer the matter for fresh taxation before the taxing master.
 - d. That this honorable court be pleased to stay the execution of the said Ruling dated the 28th July 2023, pending the hearing and final determination of the application for reference.



- e. That this honorable court be pleased to stay, pending the hearing and determination of this application for the enforcement and execution of any decree that emanates from the said Ruling of the Honorable Catherine Ng'ang'a, Deputy Registrar, pending the hearing and final determination of the application for reference.
 - f. That the cost of this application be provided for.
2. The application was based on the grounds set out therein and the applicant's supporting affidavit.
 3. The applicant deposed that by a Ruling dated 20th June 2022, the taxing master taxed the Advocate-client bill of cost at Kshs. 7,866,870. This Ruling aggrieved the applicant
 4. According to the applicant, the items respondent's bill of cost was not drawn to scale and was grossly and highly inflated, seeking to unjustly enrich the respondent. Furthermore, the applicant deposed that the taxing master misdirected herself on points of law in arriving at a decision that is untenable in law. Hence, the Ruling must be set aside.
 5. In addition, the applicant deposed that the taxing master misdirected herself by exercising her discretion on the grounds that were unclear, unreasonable and legally untenable in taxing the instruction fees of Kshs. 5,040,000.
 6. He added that the taxing master took into consideration issues that she shouldn't have and failed to consider issues she ought to in the circumstances. According to the applicant, if the orders sought are not granted, she will suffer irreparable and substantial loss.
 7. In response to the application, the respondent filed written submissions that I have duly considered.

Determination

8. I have considered the application reference, the affidavit, the submissions filed and the Ruling of the taxing master.
9. The Advocate-Client Bill of Costs emanated from Succession Cause No. 1292 of 2017 consolidated with Succession Cause No. 189 of 2019: In the estate of Ruga Gituku (deceased). Hence, the law to be applied in taxing the bill of costs is Advocate (Remuneration) Order, 2014 (hereinafter referred to as 'the Order')
10. Taxing of a bill of costs in a succession matter is settled by the provision of Paragraph 51C - Costs in probate and administration cases "Subject to paragraph 22, the scale of costs applicable to proceedings concerning probate and the administration of estates is that set out in Schedule 10."
11. Schedule 10, Part B, of the Order; "Advocate and Client Costs" states that the fees between an advocate and client shall be calculated as prescribed in Part A of the Order; 'Party and Party' costs save for the fact that it shall be increased by 50%.
12. The Court of Appeal in Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Others. EALR (1972) EA 162 set out the principles of taxation as follows:
 - i.
 - (a) That costs be not allowed to rise to such a level as to confine access to the courts to the wealthy;
 - (b) that a successful litigant ought to be fairly reimbursed for the costs that he has had to incur;



- (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession; and
 - (d) that so far as practicable there should be consistency in the awards made;
- ii. That the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party;
 - iii. That in considering bills taxed in comparable cases allowance may be made for the fall in value of money;
 - iv. That apart from a small allowance to the appellant for the responsibility of advising the undertaking of the appeal there is no difference between the fee to be allowed to an appellant as distinguished from a respondent;
 - v. That the fact that counsel from overseas was briefed was irrelevant: the fee of a counsel capable of taking the appeal and not insisting on the fee of the most expensive counsel must be estimated.
13. Furthermore, in *KTK Advocates vs Baringo County Government (2018) eKLR*, the gist of the court’s ruling was that the allocation of costs is always at the discretion of the court, which discretion must be consistent with established principles and practice and that the fees recoverable are those fees for the steps in the proceeding by the schedule of fees etc. In the same case, the factors to be taken into account in awarding costs are the difficulty and complexity of the issues, the length of the trial, the value of the subject matter and other factors which may affect the fairness or an award of costs and that it is the obligation of the taxing master to take into account these factors.
14. Before the applicant filed this reference, she requested the taxing master, through an email, to give reasons for her decision. The taxing master, in her response, stated that the reasons were contained in the ruling. The applicant is aggrieved by the instruction fees as taxed. That is Kshs. 5,040,000. The reasons given by the taxing master are as follows:-
- “On instruction fees, I note that the instruction to the applicant to petition for grant intestate in the estate of the deceased began in 2019. The value of the deceased estate is approximated to be about Kshs. 500,000,000.
- Thus, I will award instruction fees for work done by the ‘advocate’ at Kshs. 5,040,000.”
15. The value of the estate relied on by the taxing master was as per the applicant’s petition for grant of letters of administration. The applicant has not challenged the said amount.
16. Schedule 10 Part A, paragraph 1 of the Order states that the instruction fees for applying for letters of administration without Will annexed; where the gross capital value of property comprised in the grant exceeds Kshs. 1,000,000 shall be 5% of the value of the first Kshs. 1,000,000 thereof and 1% over Kshs. 1,000,000. Part B of the said schedule stipulates that the amount prescribed in Part A shall be increased by 50%.
17. The remaining items in the bill were taxed at Kshs. 2,826,870.
18. Since the instruction fees are what has significantly raised the total of the bill taxed, I have done my calculations using the provisions of Schedule 10, and I am satisfied that the taxing master exercised her discretion in taxing the Bill of Costs.



19. From the foregoing, I find that the taxing master taxed the Advocate-Client Bill of Costs justly. Therefore, I find that the Application Reference dated 25th August 2023 is without merit. There will be no orders as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER 2024

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E.K. OGOLA

JUDGE

In the presence of:

N/A for the Applicant

Mr. Towett h/b for Mr. Asli Osma for the Respondent

Gisiele Muthoni Court Assistant

