



REPUBLIC OF KENYA



**Odera v Scania Sacco Limited (Miscellaneous Application E181 of 2021)
[2023] KEHC 3557 (KLR) (Civ) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION E181 OF 2021

AA VISRAM, J

APRIL 28, 2023

BETWEEN

WASHINGTON ODERA APPLICANT

AND

SCANIA SACCO LIMITED RESPONDENT

(Being a Reference from the Ruling on taxation of the Respondent's Party to Party Bill of Costs by the Honourable L A Mumassabba dated and delivered on September 30, 2021)

RULING

1. The advocate/applicant herein has filed the Chamber Summons Reference ("the Reference") dated October 22, 2021. The Summons is supported by the grounds set out on the face of the application and further grounds in the affidavit of advocate Gorrety A Otieno. The applicant seeks the following orders:
 - a That the ruling and/or decision delivered herein on September 30, 2021 by the Honourable Learned Taxing Master, L A Mumassaba, assessing the respondent's Party to Party Bill of Costs at Kshs 20,000/= be set aside and/or vacated.
 - b That the Bill of costs aforesaid be remitted back for taxation by a different taxing officer.
 - c That the costs of this application be provided for.
2. The applicant deponed that the Learned Taxing Master awarded the respondent costs improperly incurred, and which are not permitted under paragraph 61 of the *Advocates Remuneration Order*. Accordingly, the Learned Taxing Master erred by awarding the respondent drawing, filing, and service fees on the Notice of Motion in the amount of Kshs 15,000/= without sufficient basis.



3. The applicant further deponed that Learned Taxing Master erred in awarding the respondent Kshs 5,000/= for five attendances when they had only attended court three times in regard to the matter.
4. The applicant deponed that the plaintiff's Party to Party Bill of Costs ought to be thrown out, and taxation should be conducted afresh by a different Taxing Master based on the errors stated above.
5. The respondent filed a replying affidavit sworn by Mr Brian Makau, the Chairman of the respondent herein on March 1, 2022. He deponed that the said costs relating to drawing, filing and serving had been properly awarded.
6. The respondent further averred it had attended court on five occasions as awarded by the Taxing Master, namely: on June 8th of June, 2021 to confirm the filing of the application seeking to strike out the applicant's Bill of Costs; on August 5, 2021 to confirm the completion of submissions; on August 31, 2021 to confirm whether parties had reached an agreement on the quantum; on September 16, 2021 to confirm filing of arguments with relation to expenses awarded to the respondent; and finally, on September 30, 2021 upon delivery of the judgment in which the taxing officer awarded the respondent Kshs 20,000/=.
7. The respondent averred that the Taxing Officer had properly applied the required principles in assessing the costs awarded.
8. The application was disposed of by written submission and the issue is whether or not the Taxing Officer erred in her assessment and award of costs to the respondent.
9. I have considered the grounds in support and in opposition to the application as well as the rival submissions of the parties.
10. I am of the view that the decision of a Taxing Officer is discretionary and this power can only be interfered with if the reference meets the conditions set out in the High Court case of *Nyangito & Co Advocates v Doinyo Lessos Creameries Ltd* [2014] eKLR, where Odunga J (as he was then) laid out the principles as follows: -

“That the 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 manifested excessive as to justify an inference that it was based on an error of principle;

- a It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration Order itself. Some of the relevant factors to be taken into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved; the interests of the parties, the general conduct of the proceedings and any direction by the Trial Judge;
- b If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset a taxation”



11. Further to the above, in *Kipkorir, Titioo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR the Court of Appeal quoted with approval, the following principles stated by its predecessor in *Arthur v Nyeri Electricity Undertaking* [1961] EA 497, where the court stated as follows:-

“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”.

12. In the present matter, the dispute between the parties relates to a difference of Kshs 20,000/- only.

13. Applying the principles as stated in the law above, I am satisfied that the difference is not “manifestly excessive”. I am also satisfied that the present dispute has not raised issues that may be appropriately described as an “exceptional case” as contemplated by the Court of Appeal to warrant interference by this court with the decision of the Taxing Master.

14. Further to the above, I do not think that the applicant has shown that an “error of principle” occurred as contemplated by *Kipkorir (supra)*, described in following terms:-

“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”

15. Accordingly, based on the reasons set out above, I find that the application dated October 22, 2021 is without merit. The same is hereby dismissed with costs to the respondent.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 28TH DAY OF APRIL 2023

ALEEM VISRAM

JUDGE

In the presence of;

.....for the Applicant

.....for the Respondent

