



Kuria v Mwaura Kelvin Karuga & Associates Advocates (Miscellaneous Application E088 of 2022) [2023] KEHC 21153 (KLR) (Family) (28 July 2023) (Judgment)

Neutral citation: [2023] KEHC 21153 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E088 OF 2022

MA ODERO, J

JULY 28, 2023

IN THE MATTER OF THE ADVOCATES ACT (CAP 16)

LAWS OF KENYA

AND

IN THE MATTER OF THE ADVOCATES

REMUNERATION ORDER, 2014 AND IN THE MATTER

OF TAXATION OF ADVOCATES/CLIENT BILL OF

COSTS

AND

**IN THE MATTER OF MISCELLANEOUS CIVIL
APPLICATION NUMBER E088 OF 2022 AND IN THE
MATTER OF NAIROBI HIGH COURT SUCCESSION**

CAUSE NO. 2423 OF 2010 ESTATE OF THE LATE

ELIUD NJOROGE KURIA

BETWEEN

GEOFFREY KIARIE KURIA CLIENT

AND

MWAURA KELVIN KARUGA & ASSOCIATES ADVOCATES ADVOCATE



JUDGMENT

1. Before this court is the chamber summons dated October 19, 2022 seeking the following orders:-
 - “ 1. Spent.
 2. That the Honourable Court be pleased to set aside the Taxing Officer’s Ruling dated October 23, 2022 (erroneously dated so since it was delivered on September 23, 2022) and the Certificate of costs that may have been issued in so far as the same relates to the Bill of Costs dated April 10, 2022 and the quantum awarded thereon;
 3. The Honourable Court be pleased to re-tax the Bill of Costs dated 10th April, 2022 or in the alternative remit the said Bill of Costs for fresh re taxation before a different Taxing Officer with appropriate directions thereof.
 4. Spent.
 5. Such orders as this Honourable Court deems fit in the circumstances. the Honourable C. W. Ng’ang’a, Deputy Registrar dated and delivered on the 17th day of June 2022, taxing the Advocate-client Bill of Costs dated 2nd February, 2021 at Kshs. -549/= and refer the matter for fresh taxation before the Taxing Master.
 6. The costs of this Application be provided for.
2. The Summons was premised upon rule 11 (2) of the *Advocates (Remuneration)* and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by Geoffrey Kiarie Kuria the applicant/ client.
3. The Respondent/ Advocate opposed the reference through the replying affidavit dated 17th February, 2023.
4. The reference was canvassed by way of written submissions. The applicant/ client filed written submissions dated January 19, 2023. The respondent/ Advocate did not file any submissions.

Background

5. The respondent’s firm acted for the Applicant in High Court Probate & Administration Cause Number 2423 of 2019. The Respondent thereafter filed an Advocate/Client Bill of Costs dated April 10, 2022. The Taxing master Hon. Catherine Ng’ang’a delivered a ruling on October 23, 2022 in which she taxed the Bill at Kshs. 221,180.10/=. The applicant subsequently filed this Reference seeking that the High Court set aside the decision of the Taxing Officer as well as any consequential orders thereto and prayed that the Bill of costs be remitted back to a different Taxing Officer for taxation.

Analysis and Determination

6. I have considered this application, the response filed thereto as well as the submissions filed in court.
7. The principles of setting aside the decisions of Taxing Master were well established in the cases of *Premchand Raichand Limited & another v Quarry Services of East Africa Limited and another* [1972]



E.A 162, *First American Bank of Kenya vs Shah and Others* (2002) EA 64 and *Joreth Ltd v Kigano and Associates* (2002) 1 EA 92. These include;

- a) That there was an error of principle.
 - b) The fee awarded was manifestly excessive or is so high as to confine access to the court to the wealthy.
 - c) That the successful litigant ought to be fairly reimbursed for the costs he has incurred.
 - d) That so far as practicable there should be consistency in the award.
8. It is also well established that the High Court may only interfere with the decision of the Taxing Officer where there has been an error in principle but should not do so in questions solely of quantum as that is an area where the Taxing Officer is more experienced. Therefore the court will intervene only in exceptional cases.
9. The client claims that the Taxing Master ignored evidence that the client had paid the advocate Kshs. 343,479/=. The Taxing Master in her ruling noted that the Respondent had indicated to the court that he had paid some amount as legal fees. She stated that the parties were at liberty to settle accounts between themselves.
10. The Client attached Mpesa statements and receipts to prove his claim. The Advocate on the other hand stated that he has represented the client severally in different matters. He argued that the client often sent him small amounts of money to buy 'soda' or 'airtime' which amounts should not be translated to legal fees. He stated that the client was a friend and who sent him money sometimes. That the client asked him to write him a receipt to show his mother that he was also paying legal fees.
10. In this case the burden of proof shifted to the client. He was required to prove his allegations to the required standard that the monies he had sent to the Advocate constituted payment of legal fees.
11. In this case, the client seeks to shift the burden of proof to the respondent to rebut unproved allegations. The reverse is correct. The plaintiff/applicant is required prove his case on balance of probabilities before the Defendant/ Respondent can rebut them.
12. By merely alleging that he paid fees and providing receipts without linking them to the particular case, the client cannot claim to have discharged the burden of proof on a balance of probabilities.
13. The Taxing Master had the benefit of hearing the parties first hand and in my view, she was better placed to weigh the material before her. I find no evidence to show that the Taxing Master overlooked relevant evidence or that she ignored material facts. On the contrary I find that she considered all the relevant factors. I find no basis to fault her findings on the issue under consideration.
12. On the issue of costs, I direct that each party to bear its own costs for this reference.

DATED IN NAIROBI THIS 28TH DAY OF JULY, 2023.

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MAUREEN A. ODERO

JUDGE

