



**Kinyanjui Njuguna & Co Advocates v National Social Security  
Fund; Board of Trustees (Miscellaneous Application E438 of 2022)  
[2023] KEHC 21831 (KLR) (Commercial and Tax) (15 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21831 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E438 OF 2022  
JWW MONG'ARE, J  
AUGUST 15, 2023**

**BETWEEN**

**KINYANJUI NJUGUNA & CO ADVOCATES ..... ADVOCATE**

**AND**

**NATIONAL SOCIAL SECURITY FUND; BOARD OF TRUSTEES ..... CLIENT**

**RULING**

1. The applicant was retained by the client /respondent to represent it in Kisii Misc Appl No 99 of 2011- Republic v Chief Magistrate Court at Kisii, Board of Trustees(NSSF ) v Isaac Nderitu (ex- parte). Subsequently, the advocate filed his bill of costs claiming the sum of Kshs 5,794,599/- being instructions fees and disbursements. On October 21, 2022, the taxing master taxed off the said advocate-client bill of costs and reduced item 1 on instruction fees from Kshs 1,928,021/- to Kshs 50,000/-. The taxing master also adjusted several other items on the bill downwards.
2. Aggrieved by the taxing master's decision on the said advocate-client's bill of costs, the advocate moved this court on December 15, 2022 by chamber summons application brought under order 11 of the *Advocates Remuneration Order*. In the said application, the advocate argues that the taxing master made an error of principle in failing to note that item 1 on the instruction fees was premised on the sum of Kshs 53,830,812/- as the value of the subject matter in the matter that the advocate was retained to defend on behalf of the respondent. The advocate placed reliance on the courts holding in the matter of *Peter Muthoka & another v Ochieng & 3 others*(2019)eKLR, which emphasised that instructions fees on an advocate-client bill of costs should be calculated based on the value of the subject matter, where the same is discernible from the pleadings, if the same is done before judgment has been entered. The advocate argued that it is only where the same is not discernible from the pleadings or judgment that the taxing master is legally allowed to use their discretion during a taxation of item no 1 on the



advocates-client bill of costs. The advocate urged the court to set aside the said ruling and refer the matter back for re-taxation before another taxing master or in the alternative this court be pleased to re-tax the bill instead.

3. In opposing the application the respondent filed a replying affidavit sworn by Caroline Rakama Odera on June 26, 2023, the legal manager of the Respondent. The position taken by the respondent is that the taxing master has discretion in deciding whether to reduce an item on a bill of costs and that there was no error of principle on the part of the taxing master. The respondent placed reliance on the case of *Ngatia & Associates Advocates v Interactive Gaming Lotteries Limited* (2017) eKLR where the court outlined the principles upon which the High Court will interfere with a taxing master's decision on a taxation. The respondent argued that the suit subject of the taxation arose from a criminal prosecution and the advocate's role was to represent the client in the judicial review application that sought to quash the criminal prosecution. It is their position that it was not possible to discern the value of the subject matter from the criminal proceedings, and hence the taxing master was right in the decision rendered in the taxation.
4. I have considered the rival arguments put forth by parties and I note that indeed the instructions herein relate to representation in a judicial review application. I further note that the advocates remuneration order sets the basic instructions fees for a judicial review application at Kshs 45,000/- under schedule 6A which provides as follows:-

“Constitutional petitions and prerogative orders- (j). to present or oppose an application for a constitutional and prerogative orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—(i) where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000 Kenya shillings.

5. The current *Advocates Remuneration Order* proposes a fee of Kshs 45,000/- as a minimum on a judicial review application. It is argued by the defence, which argument has not been controverted, that the matter was dispensed with summarily. I therefore find that the taxing master correctly applied the proper principles in taxing the advocates-client bill of costs under item 1 at Kshs 50,000/- and I find no good reason to interfere with the said decision.
6. In conclusion, I hold and find that the application before this court lacks merit and the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF AUGUST 2023**

.....  
**J. W. W. MONG'ARE**

**JUDGE**

In The Presence Of

Muuu holding brief for Mrs. Mbaabu for the Respondent.

No appearance for the Applicant.

Sylvia- Court Assistant

