



**Lubullelah & Associates Advocates v Structural Construction  
International Ltd (Miscellaneous Application E600 of 2022)  
[2023] KEHC 22957 (KLR) (Commercial and Tax) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22957 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E600 OF 2022  
JWW MONG'ARE, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**LUBULLELAH & ASSOCIATES ADVOCATES ..... APPLICANT**

**AND**

**STRUCTURAL CONSTRUCTION INTERNATIONAL LTD ..... RESPONDENT**

**RULING**

1. On 22<sup>nd</sup> March 2023 the Advocate/Applicant filed a Reference by way of a Chamber Summons application brought under Rule 11(1)-11(4) of the *Advocates Remuneration Order* seeking to set aside the taxing master's ruling on items number 1 & 2 of the Advocate-Client Bill of Costs dated 19<sup>th</sup> August 2022 and remit the same for re-taxation before a different taxing master or have the Honourable Court proceed and re- assess the said items.
2. The Application is supported by the grounds set on its face and the supporting affidavit of Eugene Lubale Lubullelah Advocate sworn on 22<sup>nd</sup> March 2023. The Client/Respondent in opposition to the said chamber summons filed a replying affidavit sworn by Karsan Harji Raghwani, the Managing Director of the Client. Both parties have filed written submissions and bundle and list of authorities in support and opposition to the application thereto.
3. The Applicant argues that the taxing master abdicated her judicial duty to exercise discretion judiciously, and consequently committed an error of principle, by failing to take into account and consider ALL the relevant factors for increasing basic fees, which required her to take into consideration the principles that include the following factors;
  - a. Care and labour required by the advocate



- b. The number and length of papers to be perused
  - c. The nature and importance of the matter
  - d. The value (where ascertainable) of subject matter
  - e. Interest of the parties
  - f. Complexity of the matter; and
  - g. novelty of the matter.
4. In awarding the basic minimum instruction fees, the Applicant argued that the taxing master failed to consider the above stated principles and judiciously exercise her discretion. The Advocate urges the court to remit the said Bill of Costs to a different taxing master for re-taxation or reassess the same.
5. In response and opposition to the application the client/Respondent urged the court to dismiss the chamber summons. The Respondent argued that the taxing master correctly applied the principles of taxation under Schedule 6 of the Advocates Remuneration Order and was guided by the submissions made by both parties when they appeared before her for taxation. The Respondent further submitted that taxation of the Advocates-Client Bill of costs is a question of discretion of the Taxing Master and that she was correct in applying her discretion in the manner she did. The Respondent urged the court to uphold the taxation as carried out by the taxing master.

### **Analysis and Determination**

6. Order 11(1) & (2) of the Advocates Remuneration Act provides as follows:-
- “a. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
  - b. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”
7. I have considered carefully the submissions by the parties and carefully analysed the ruling by the taxing master. In her ruling the taxing master states that the bill is taxed off based on the final award by the Arbitrator and proceeds to break down the items as per scale provided under schedule 6 of the Advocates Remuneration Order. In challenging the outcome of the taxation, the Applicant argues that the taxing master failed to apply her discretion to increase the taxed costs from the basic minimum to a higher amount.
8. Blacks law dictionary defines discretion as follows:-
- “A liberty or privilege allowed to a judge, within the confines of right and justice, but independent of narrow and unbending rules of positive law to decide and act in accordance with what is fair, equitable, and wholesome, as determined upon the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit, principles and analogies of the law.”



9. Flowing from the above definition, it can be summarised that indeed Judicial discretion refers to a judge's power to make a decision based on their individualized evaluation, guided by the principles of law. The Applicant herein takes issue with the decision of the taxing master and argues that she failed to consider a variety of issues in allowing the basic minimum fees allowed under the Advocates Remuneration Order and therefore, according to the Applicant, failed to apply her discretion in a judicious manner.
10. I have considered the rival submissions on the issue and I note that there is no challenge to the fact that the taxed bill is assessed under the correct schedule under the Advocates Remuneration Order and that the taxing master allowed the minimum basic fees allowed therein. I am therefore persuaded that the taxing master considered all the factors before her and made a determination taking into account the same. I find no assertions by the Applicant that she considered any extenuating factors in her decision making. I am therefore convinced that she properly and judiciously applied her mind and properly exercised her discretion and arrived at a correct decision in accordance with the law and find no good reason to disturb the same.
11. The upshot of the above finding is that Chamber Summons Application is hereby dismissed for want of merit with costs to the client.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023.**

.....

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

**JUDGE**

**In the Presence of:-**

1. Mr. Lubulellah Eugene for the Advocate/Applicant.
2. Ms. Ngeresa for the Client/Respondent.
3. Amos - Court Assistant

