



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**MISC. APPLICATION NO. E054 OF 2021**

**ANDREW KANARI RUIGORA**

**(Suing as the Personal Representative**

**of the Estate of TERESIA MUKAMI**

**KANARI (DECEASED).....APPLICANT**

**-VERSUS-**

**GACHOKA MWANGI ADVOCATES.....RESPONDENT**

**RULING**

1. The Applicant herein instructed the Respondent firm to represent him in a running down matter in which judgment was entered in his favour in the sum of Kshs. 1,166,154/- which amount the Respondent has retained demanding payment of his advocates fees. The Applicant contended that the advocates' fees had been agreed at 30% of the judgment sum as opposed to an hourly rate as claimed by the Respondent. As a result, the Respondent filed an Advocates-Client Bill of Cost dated 11<sup>th</sup> June, 2019 which was taxed on 25<sup>th</sup> February, 2021 in the sum of Kshs. 540,233.28/-

2. Aggrieved by the Taxing Master's decision, the Applicant moved this court vide a Chamber Summons application dated 9<sup>th</sup> April, 2021 seeking for **ORDERS THAT:**

*1) The Honourable Court be pleased to set aside the decision of the Senior Deputy Registrar Hon. Muchoki delivered on 25<sup>th</sup> February, 2021 (hereinafter referred to as the ruling) to the extent that it related to the reasoning and determination pertaining Items No. 1 and on calculations arriving at Kshs. 540,233.28/= in the Advocates/Clients bill of costs dated 11<sup>th</sup> June, 2019.*

*2) This Honourable Court be pleased to re-assess the fees due on the aforesaid items of the advocates in respect of the Bill of Costs and make findings on the same.*

*3) In the alternative and without prejudice to the foregoing, this Honourable Court be pleased to remit the aforesaid items of the Bill of Costs to another taxing officer for review and reconsideration with direction on taxation.*

*4) The costs of this application be awarded to the Applicant advocate*

3. The application is founded on the grounds set out on the face therein and the Supporting Affidavit of **Namada Simon** sworn on even date.

4. In response to the application, the Respondent filed Grounds of opposition dated 26<sup>th</sup> October, 2021. They contended that the application is intended to deny an advocate fee for work duly done and that the Taxing Master did not deviate in any way from known principles in taxation and the application is merely a delaying tactic.

5. The Applicant filed written submissions dated 24<sup>th</sup> September, 2021 in support of the application while the Respondent filed written submissions dated 26<sup>th</sup> October, 2021 opposing the application.

**Analysis and Determination**

6. I have considered the application and parties' submissions. The main issues for determination are whether the decision of the Taxing Master dated 25<sup>th</sup> February 2021 should be set aside and, if in the affirmative, whether the bill should be re assessed by this court or in the alternative remitted to a different Taxing master for re assessment.

7. The Applicant is disputing the entire decision of the Taxing Master delivered on 25<sup>th</sup> February, 2021 on the ground that the Taxing Officer erred in principle in awarding higher instruction fees despite the matter being a running down in nature and straightforward with no complex issues. Secondly, that the Taxing Officer misdirected herself and acted contrary to the established principles by failing to calculate the total costs of the bill as provided for in the Advocates Remuneration Order, Schedule 7 part B. Lastly, the taxing officer erred in law by failing to apply the applicable principles and taxed the bill contrary to the applicable schedule 7 provided for in the Advocates Remuneration Order.

8. It is now trite law that the High Court will only interfere with the decision of a Taxing Master in cases where there has been shown to be an error in principle. In **Republic v Ministry of Agriculture & 20 Others Ex-Parte Muchiri W' Njuguna [2006] eKLR**, Hon. Justice J.B. Ojwang (Retired) stated as follows: -

*“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.... 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 manifestly excessive as to justify an interference that it was based on an error of principle.” [Emphasis mine]*

9. Differently put, before the court can interfere with the decision of the taxing master it must be satisfied that the taxing master's ruling was clearly wrong. This means that the court will not interfere with the decision of the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differs so materially from its own that it should be held to vitiate the ruling.

10. I note that the ruling of the Taxing Master has not been annexed either to the affidavit in support of the application or to the submissions neither are any reasons for the taxation availed to the court. These reasons need not be formal reasons requested of the Taxing Master. Where the reasons are discernable from the decision, that should suffice.

11. **Odunga J**, in **Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Limited [2012] eKLR**, held that:

*“It is therefore clear that the interpretation by the court especially the High Court on this issue is far and varied. In my view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles.*

*However, where there are reasons on the face of the decisions, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of a reference since that insufficiency may be the very reason for preferring a reference”.*

12. There being no reasons attached, either in the form of the decision of the Taxing Master or formal reasons given on request, the application herein is incompetent.

13. The application is thus struck out. I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY FEBRUARY, 2022**

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**A. K. NDUNG'U**

**JUDGE**