



**Makhecha & Gitonga Advocates v Standard Group PLC (Miscellaneous Civil Application E357 of 2020) [2022] KEHC 11107 (KLR) (Civ) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11107 (KLR)

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

**CIVIL**

**MISCELLANEOUS CIVIL APPLICATION E357 OF 2020**

**JK SERGON, J**

**MAY 31, 2022**

**BETWEEN**

**MAKHECHA & GITONGA ADVOCATES ..... APPLICANT**

**AND**

**STANDARD GROUP PLC ..... RESPONDENT**

**RULING**

1. The advocate/applicant herein has filed the Chamber Summons Reference (“the Reference”) dated August 27, 2021. The Summons is supported by the grounds set out on its face and the facts stated in the affidavit of advocate Wangeci Mwangi and sought for the following orders:
  - i. That this honourable court be pleased to vary or set aside the decision of the Taxing Master contained in the ruling delivered on June 24, 2021.
  - ii. That costs of this application /reference be borne by the respondent.
2. In opposition to the Summons, the replying affidavit sworn by Millicent Ngetich on October 25, 2021 was filed on behalf of the client/respondent to which followed by the further affidavit sworn by Wambugu Gitonga on November 22, 2021.
3. Pursuant to the directions issued by the court on June 24, 2021, the parties opted to rely on the averments made in their respective affidavit.
4. I have considered the grounds set out on the body of the Summons; the facts deponed in the affidavits filed in support and in opposition.
5. A brief background of the matter is that the applicant filed the Advocate-Client Bill of Costs dated September 4, 2020 on September 9, 2020 for the sum of Kshs.711,108/= arising out of HCCC no.



- 368 of 2012 (Charles Omanga v Standard Group Limited & 5<sup>th</sup> others) being a defamation claim in which the applicant acted for the respondent as one of the defendants at all material times.
6. The Bill of Costs was placed before the taxing officer, and taxed at the sum of Kshs.344,930/= vide the ruling delivered on June 24, 2021.
  7. Returning to the Reference, it is clear that the order sought therein is for the varying and/or setting aside of the taxation.
  8. The applicant avers that the taxing master erred in principle on the instruction fees and that the amount of Kshs.100,000/= allowed as instruction fees is manifestly low and an error of principle as well as failing to consider the submissions of the applicant.
  9. The applicant contends that taxing master failed to appreciate that the legal fees should not be unreasonable or so low as to deter a person from adequate representation.
  10. The applicant states that the application is not time barred having been filed within fourteen days after receiving the certified copy of the ruling with reasons for taxation and that the prayers sought in the plaint were monetary in nature and the value of the subject matter can therefore be ascertained from the pleadings.
  11. The respondent on the other hand contends that the taxing master applied the correct principles in arriving at the instruction fees payable to the applicant.
  12. The respondent pointed out that the primary suit was dismissed upon a Notice to Show cause on December 7, 2019 without determination on damages and that the Bills of costs dated September 4, 2020 was filed without assessment of damages by the court in the primary suit.
  13. It is the respondent's averment that it was correct for the taxing master to find as she did that the value of the subject matter was not ascertainable from the pleadings and therefore she determined the applicable scale and properly exercised discretion in determining that the applicant was entitled to the instruction fees of Kshs.100,000/=.
  14. It is apparent therefrom that the amount taxed on instruction fees is the one being essentially challenged.
  15. The courts have previously considered factors that would trigger the interference of a taxing master's decision on appeal. In the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR the Court of Appeal held thus:

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”

The Court above went ahead to reason that an error of principle would include the excessive award of costs or the overemphasis on factors such as the nature and complexity of the matter at hand.
  16. The above legal position was reaffirmed in the case of *Moronge & Company Advocates v Kenya Airports Authority* [2014] eKLR similarly determined by the Court of Appeal.
  17. Upon my perusal of the record, I note that in the Advocate-Client Bill of Costs, the applicant sought for the sum of Kshs.300,000/= on Item 1 being the instruction fees to represent the respondent in the defamation claim in which the plaintiff therein sought a variety of damages plus costs of the claim.
  18. In her ruling, the learned taxing master reasoned that in the absence of a judgment in the defamation claim at the time, she was left to deduce the ‘value of the subject matter’ from the pleadings but that



in that instance, it was not possible to ascertain the value of the subject matter since the prayers sought in the plaint.

19. Consequently, the learned taxing master drew guidance from Schedule VI, paragraph 1 (L) of the *Advocates Remuneration Order*, 2009 which provides thus:

“To sue or defend in any case not provided for above, such sum as may be reasonable but not less than 6,300/”

20. Going by the record, it is apparent that the learned taxing master also made reference to Schedule 6 of the *Advocates (Remuneration) (Amendment) Order* 2014 in taxing the Bill of Costs in question.

21. The Court of Appeal in the above-cited case of *Joreth Limited v Kigano & Associates* [2002] eKLR which was both referenced in the impugned ruling by the learned taxing master and the submissions by the applicant, succinctly stated the following in respect to ascertaining of the value of the subject matter of a suit:

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

22. Upon my perusal of the record, I agree with the finding of the learned taxing master that given the nature of the claim of defamation, it was not possible to ascertain the value of the subject matter. I however disagree with her reasoning that the claim was non-monetary in nature.

23. Be that as it may, from my study of the record and consideration of the foregoing circumstances, material and authorities, I am of the view that the learned taxing master applied the correct principles and arrived at a reasonable assessment of the instruction fees.

24. The upshot is that the Chamber Summons dated August 27, 2021 lacks merit hence it is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31ST DAY OF MAY, 2022.**

.....

**J. K. SERGON**

**JUDGE**

**In the presence of:**

..... for the Advocate/Applicant

..... for the client/Respondent

