



Mwangi Keng'ara & Co. Advocates v Mungai (Miscellaneous Civil Application E348 of 2021) [2022] KEHC 10611 (KLR) (Commercial and Tax) (27 May 2022) (Ruling)

Neutral citation: [2022] KEHC 10611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E348 OF 2021**

A MSHILA, J

MAY 27, 2022

BETWEEN

MWANGI KENG'ARA & CO. ADVOCATES ADVOCATE

AND

ZIPPORAH MUNGAI CLIENT

RULING

Background

1. The applicant filed chamber summons dated October 5, 2021 under paragraph 11(2) of the [Advocates Remuneration Order](#) for the following orders;
 - a. The ruling dated September 29, 2021 whereby the Advocate / Client Bill of Costs dated May 11, 2021 was taxed at Kshs.171, 351.00 be partially set aside and the Advocate Client Bill of Costs dated May 11, 2021 be remitted for re-taxation with appropriate directions on the value of the subject matter.
 - b. The finding by the Honourable Taxing Officer that items number 18, 19, 20,21 and 22 were drawn under schedule 5 part 2 be set aside.
2. The application was supported by the sworn affidavit of Mercy Nduta Mwangi who stated that the Advocate/applicant seeks a partial setting aside of the ruling dated September 29, 2021 in so far as it holds that the primary suit giving rise to the taxation is Milimani CMCC No 4679 of 2019 and not Milimani CMCC No 4680 of 2019, which led to the adoption of the wrong subject matter of the said suit.



3. There is an error apparent of the face of the record in so far as the ruling dated August 24, 2021 refers to CMCC No 4679 of 2019 as the primary suit which gave rise to the taxation instead of CMCC No 4680 of 2019.
4. The Taxing officer acknowledges in the letter giving reasons that he inadvertently assumed he was taxing a bill of costs in Miscellaneous Civil Application No E345 of 2021 and the submissions and supporting documents that he relied on were not for Miscellaneous Civil Application No E348 of 2021.
5. Due to the inadvertent mistake of the court the correct bill of costs was not taxed and it is only fair and just that the ruling dated September 29, 2021 be set aside and the advocate/client bill of costs dated May 11, 2021 remitted back for re-taxation.

Applicant's Case

6. The applicant filed an advocate/client bill of costs dated May 11, 2021 for the assessment of legal costs arising from services which were rendered in representing the client in Nairobi CMCC No 4680 of 2019 Zipporah Mungai versus County Capital Limited & 2 others.
7. The client/respondent filed a notice of motion dated June 2, 2021, wherein orders to strike out were sought. The notice of motion was dismissed by the Ruling dated September 29, 2021.
8. It was the Applicant case that this Reference does not challenge the order dismissing the Notice of Motion dated 2nd June 2021, hence the prayer for a partial setting aside of the section of the Ruling which relates solely to the taxation. Thereafter, the Applicant filed an Objection to the Ruling under Rule 11 (1) of the Advocates (Remuneration) (Amendment) Order, on 30th September 2021.
9. The basis for the said 'objection' is that in the Ruling dated September 29, 2021, the taxing officer held that the costs which were taxed related to CMCC No 4679 of 2019 wherein the value of the subject matter was Kshs 2,470,000.
10. The applicant submitted that the Taxing Officer applied the wrong subject matter, namely CMCC No.4679 of 2019 instead of CMCC No.4680 of 2019. Secondly, the Taxing Officer adopted the wrong value of the subject matter as Kshs.2, 470,000/= instead of Kshs.5, 565,179/= which facts did not rise from the bill of costs or any pleadings which were filed by the parties. On the face of the Bill of costs, it explicitly states that the taxation arises from *MILIMANI CMCC NO.4680 of 2019*.
11. The taxing officer gave the reasons for the ruling through a letter dated October 4, 2021 wherein the taxing officer indicated that he wrongly taxed the Bill of costs for E345 of 2021 and not the one in this cause. Even though the applicant's counsel pointed out to the court this error soon after the ruling was delivered the respondent's counsel declined to consent to the ruling being set aside and the taxation of the proper bill to proceed.
12. It was the applicant's submission that the Ruling dated 2 September 9, 2021 consists of error of principle for failure to adopt the correct subject matter and the value thereof, leading to a wholly unjust decision.

Issues For Determination

13. The application herein is unopposed and the court has considered the applicant's application and written submissions and the following issues are for determination;
 - a. Whether there are good reasons for setting aside the ruling dated September 29, 2021;
 - b. Whether the Advocate Client Bill of Costs dated May 11, 2021 be remitted for re-taxation;



Analysis

14. The Application for determination before this court is premised on the provisions of rule 11 of the *Advocates Remuneration Order* which provides;

Objection to decision on taxation and appeal to Court of Appeal

- (1) 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.
- (2) 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.

15. As already elaborated by the applicant, that it filed an advocate/client bill of costs dated 1 May 1, 2021. Thereafter, the client filed the Notice of Motion dated June 2, 2021 seeking to strike the ruling by the taxing officer. The said notice of motion was dismissed.

16. Upon the taxing officer delivering his ruling dated September 29, 2021, the applicant vide a letter dated September 30, 2021, raised an objection under rule 11 (1) of the Advocates (Remuneration) (Amendment) Order on the grounds that the taxed costs were for CMCC No. 4679 of 2019 instead of CMCC No. 4680 of 2019.

17. The Taxing Officer vide a letter dated 4th October 2021 admitted that he erroneously taxed CMCC No 4679 of 2019 instead of CMCC No 4680 of 2019. He went further to clarify that his ruling was in error and which he only noticed when it was brought to his attention by the Applicant.

18. The court in *Kipkorir & Kiara Advocates v Deposit Protection Fund Board* [2005] I KLR 528 stated that:

“And if a Judge on reference from a taxing officer finds that the taxing officer has committed an error of principle. The general practice is to remit the question of quantum for the decision of taxing officer. The Judge has however a discretion to deal with the matter himself or herself if the justice of the case requires.”

19. In view of the above circumstances, this court is satisfied that the taxing officer made an error which amounts to an error in principle; and this court finds that there are good grounds for interfering with the decision of the Taxing Master made on the September 29, 2021. Therefore, the ruling made on September 29, 2021 shall be set aside and in the interest of justice, the Advocate Client Bill of Costs dated May 11, 2021 be remitted for re-taxation before a different Taxing Officer.

Findings and Determination

20. In the light of the foregoing this court makes the following findings and determination;

- i. This court finds that the application has merit and it is hereby allowed;
- ii. The ruling dated September 29, 2021 is hereby set aside and the advocate/client bill of costs dated May 11, 2021 is hereby remitted back for re-taxation by a different taxing master.
- iii. There shall be no order as to costs.



Orders Accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 27TH DAY OF
MAY, 2022.**

HON. A. MSHILA

JUDGE

In the presence of;

No appearance by parties

Lucy-----Court Assistant

