



REPUBLIC OF KENYA



**Nyangito v Gechuki (Criminal Revision 371 of 2021)
[2022] KEHC 11895 (KLR) (Crim) (25 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION 371 OF 2021
JM BWONWONG'A, J
JULY 25, 2022**

BETWEEN

**LAWRENCE OIGORO NYANGITO C/O NYANGITO & ASSOCIATES
ADVOCATES APPLICANT**

AND

JANET OSEBE GECHUKI RESPONDENT

RULING

1. This is a reference for consideration of the chamber summons dated September 24, 2019 brought by the applicant (hereinafter 'the advocate') under rule 11 (2) (3) of the *Advocates (Remuneration) Order*. It emanates from the decision of Hon Mukami Wachira the taxing master, of September 11, 2019 in respect of the advocate/client bill of costs dated February 21, 2019 taxing the bill at Kshs 205,200/=.
2. The client/respondent did not participate in these proceedings, notwithstanding that she was served with a notice of hearing. These proceedings therefore proceeded exparte.
3. In the chamber summons, the applicant sought the following orders:
 1. That the ruling delivered on September 11, 2019 by the honourable learned taxing master Mukami Wachira, taxing the advocate-client bill of costs dated February 21, 2019 at Kshs 205,200/= be set aside and or vacated.
 2. That the bill of costs dated February 21, 2019 be remitted back for re-taxation by a different taxing officer with appropriate directions
 3. That in the alternative, this honorable court do tax the advocate-client bill of costs
 4. That the costs of the application be provided for.



4. The application is premised on the grounds that the taxing master erred in law in failing to properly tax the advocate-client bill of costs. Further that the taxing master erred in law and in fact in taking into account irrelevant facts in the taxation of the bill of costs. Another ground raised is that the taxing master erred in law in completely ignoring the submissions filed by the applicant. Finally, that the taxing master erred in principle and rendered an erroneous conclusion.
5. The chamber summons is further supported by an affidavit sworn by Lawrence Oigoro Nyangito dated September 29, 2019. It is his deposition that pursuant to the ruling of the court, the applicant *vide* letter dated 20.09.2019 wrote a letter to the deputy registrar requesting for certified copies of the reasons for the decision in the ruling on taxation. That on September 23, 2019, the applicant received a copy of the ruling together with reasons for the taxation from the registry, and were informed that the reasons were incorporated in the ruling.
6. The applicant avers that the taxing master did not subject the advocate-client bill of costs to the relevant provisions of the advocate remuneration order, thereby reaching an erroneous conclusion. Further that she did not take into account relevant factors in the taxation of the bill of costs.

The Applicant's Submissions

7. The applicant filed written submissions dated March 18, 2022. He submitted that he diligently discharged his duties including representing the respondent, who was an accused person in the magistrate's court. He claimed that pursuant to his representation², he had taxed his bill at Kshs 5,790,000/= after the respondent refused to pay his legal fees. He further submitted that as per his bill of costs, he had demonstrated his representation of the respondent considering the serious nature of charges the respondent faced.
8. Secondly, that the value in respect of the nature of the offences she was facing was high and the advocate/applicant was able to accurately mitigate and convince the court to admit the respondent to reasonable bond terms. It was submitted that the taxing master erred in principle by discarding the sum of Kshs 5,790,000/= which the applicant sought and instead taxing the amount at a sum of Kshs 205,200/=. He has urged this court to exercise its discretion and enhance the figure to a reasonable figure commensurate to the legal services offered.

Issues For Determination.

9. The issue that arise for determination upon considering the application, the supporting affidavit and submission by counsel are:
 - i. Whether or not the taxing master in proceeding to consider the advocate-client bill of costs dated February 21, 2019 erred in fact and law in coming to the conclusion that the applicant was entitled to the taxed costs in the sum of Ksh 205,200/=

Analysis And Determination.

10. The advocate-client bill of costs is governed by schedule VI part (b) of the [*Advocates Remuneration Order*](#). The schedule sets out the parameters to be considered by the taxing master in determining costs payable to the advocate for professional legal services rendered to a client. The law in these kind of matters places the jurisdiction on taxation of costs upon the Registrars or Deputy Registrars of the High Court. That definition can be found in paragraph 10 of the [*Advocates Remuneration Order*](#) and section 7 of schedule six of the [*Constitution*](#) 2010.



11. The jurisdiction to be exercised by the Registrar or Deputy Registrar is clearly spelt out in the [*Advocates Remuneration Order*](#). A certificate of taxation issued by the Registrar or Deputy registrar of the court is appealable to the High court by way of reference as provided for under rule 11(1) of the [*Advocate Remuneration Order*](#).

12. This legal proposition was discussed in the case of [*Machira and Company Advocates v Magugu*](#) (2002) 2 EA 248 where Ringera, J held as follows:

"Secondly as I understood the practice relating to taxation of bills of costs, any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to the Judge in accordance with paragraph 11 of the Advocates Remuneration Rules". and further in *Donholm Rahisi Stores (Firm) v EA Portland Cement Ltd* 2005 e-KLR the court held:

"Taxation of costs whether those costs be between party and party or between Advocate-client is a special jurisdiction reserved to the taxing officer by the Advocates Remuneration Order. The court will not be drawn into arena of taxation except by way of a reference from a decision on taxation, made under rule 11 of the Advocates Remuneration Order. The present application is not a reference. The application seeks an order that would have the effect of interfering with the special jurisdiction of the taxing officer, a jurisdiction that the court cannot take upon itself."

13. In [*Joreth Limited v Kigano & Associates*](#) [2002] eKLR the court stated as follows:

"We have found that the learned judge erred in reassessing the instruction fee and we have also found that the taxing officer applied correct principles in arriving at the figure of instruction fee that he awarded. What the learned judge did not appreciate was that sitting on a reference against the assessment of instruction fee by the taxing officer he ought not to have interfered with the assessment of costs unless the taxing officer had misdirected himself on a matter of principle."

14. In the instant case, learned counsel Mr Nyangito challenged the taxed bill of costs claiming that the taxing master erred in law and fact in awarding the taxed bill of costs at Kshs 205, 200/=

15. In the light of the applicable law, I find that there is no dispute that taxation of costs rests on the principles set out in the case of [*Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and others*](#) No 3 (1972 EA 162 where the court stated as follows:

- (a) the successful litigant ought to be fairly reimbursed for costs he has had to incur
- (b) That costs be, not allowed to rise to such level as to confine access to justice to the wealthy.
- (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and
- (d) that as far as practicable there should be consistency in the awards made.
- (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances



- (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically
- (g) the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”
16. It is clear from the above principles that the duty of a taxing officer is to assess the fair and reasonable remuneration under the [Advocates Remuneration Order](#) that a party or an advocate is entitled to pay to the successful party. On perusal of the submissions the issue, is whether the taxing officer in exercising her discretion applied the settled principles in assessing counsel’s bill of costs.
17. The law in Kenya provides for considerable guidance regarding instructions fees that should be charged in non-contentious matter. According to schedule VI A (a) of the [Advocates Remuneration Order](#), the underlying factors on instructions fees are clearly spelt out. To give meaning to the provisions the taxing officer is clothed with wide discretion to make an inquiry as to the suitability on instructions fees in order to enhance or reduce it altogether. The approach to be adopted in taxing instruction fees lies in the principles set out in the case of [Joreth Ltd v Kigano Advocates](#) (2002) I EA 92 where the court held *inter alia* that:
- ”The instructions fee is an independent and static item it is charged once only and it is not affected or determined by the stage the suit has reached.”
18. On the issue of instruction fees, the taxing officer is bound to consider the services rendered. The information in question must be furnished to the taxing officer in the event a bill of costs falls for consideration by the court. If having regard to the evidence, nature of the claim and its complexity, its importance to the party, the time and resources expended by the advocate in research, communication, attendances, a taxing officer decision must give reasons for the cost allowed in the taxation.
19. In her decision, the taxing master stated that the figure of the instruction fee was not given by the applicant. Further, there was no judgment on record to consider and proceeded to apply her discretion citing the case of [Joreth Ltd v Kigano & Associates](#) Civil Appeal No 66 of 1999 [2002]1 EA 92. She proceeded to tax the instruction fee at Kshs 100,000/=
20. Item 2 is in respect of court attendance for plea taking from 8 am to 4 pm on October 30, 2018, the taxing master taxed the bill at Kshs 32,000/= stating that the attendance per 15 minutes which is charged at Kshs 1,000/= is provided under schedule V paragraph 3. The applicant urged the taxing master to tax his bill at Kshs 500,000 stating that the case involved a lot of time and research.
21. The taxing master taxed item 3 as correctly drawn to scale and hence was taxed at Kshs 10,000/=.
22. Item 4 was taxed off as there was no such attendance on record. Having perused the record, I agree with the taxing master on item 4 which she taxed off from the bill as filed.
23. The taxing master taxed Item 5 at Kshs 14,000/=. The reasons advanced were that the applicant attended court from 9 am to 12 noon. This was attendance per 15 minutes which is charged at Kshs 1,000 each as provided for under schedule V paragraph 3 of the [Advocates Remuneration Order](#).



24. Item 6 was taxed at Kshs 12,000/= which was a court attendance from 9 am to 12 noon. The same is correctly taxed to scale as provided under schedule V of the *Advocates Remuneration Order*.
25. Item 7 and 8 was taxed at Kshs 10,000/= each which was a court attendance from 9 am to 11.30 am on both occasions. I find that they were taxed to scale by the taxing master as the same was done within the provisions of schedule V of the *Advocates Remuneration Order*.
26. Item 9 the taxing master considered it and found that it is drawn to scale at Kshs 20,000/=
27. Item 10 was taxed at Kshs 12,000 being court attendance from 9 am to 12 noon; although the applicant had in his bill of costs had drawn the same at Kshs 5,000,000. The reasons advanced by the advocate were that he had attended and persuaded the court to grant reasonable cash bail and thereafter processed his release from 12.30 pm to 4.20pm. This item is governed by the provisions of schedule V paragraph 4 of the *Advocates Remuneration Order*. It provides for the time engaged to be based in lieu of charges per item of work done per for 15 minutes or part thereof being taxed at shs 7,000/-. Consequently, the taxing master should have taxed the same at Kshs 107,334/- (which is 230 minutes / shs 7,000/-per 15 minutes).
28. Bearing in mind the decisions in *Kipkorir T Too & Kiara Advocates v Deposit Protection Fund* [eKLR] 2004 and *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No 3)* [1972] EA 162 and on the principles governing taxation and in view of the clear provisions of the *Advocates Remuneration Order*, 2014 and case law cited, the chamber summons partly succeeds in respect of item 10 which is consequently taxed at Kshs 107,334. Items number 1 to 9 were properly taxed by Hon Mukami dated September 11, 2019 in respect of the advocate-client bill of costs dated February 21, 2019 taxing the bill at Kshs 205,200/= was proper, subject to the additional figure of Shs Kshs 107,334 under item 10.
29. In the premises, the advocate-client bill of costs dated February 21, 2019 is hereby taxed at Kshs 312, 534 with no orders as to costs.
30. Orders accordingly.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF JULY 2022.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Mr. Mutwiri holding brief for Mr. Nyangito for the applicant

In the absence of the respondent

