



REPUBLIC OF KENYA



KENYA LAW
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**Karanja v Industries (Civil Case 514 of 2014) [2022] KEHC 16109 (KLR)
(Commercial and Tax) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 514 OF 2014
WA OKWANY, J
NOVEMBER 24, 2022**

BETWEEN

GEORGE RAGUI KARANJA PLAINTIFF

AND

STYLE INDUSTRIES DEFENDANT

RULING

Introduction

1. The Plaintiff/Applicant filed the suit herein against the Defendant/Respondent claiming infringement and/or unlawful use of industrial design No. 752. The Plaintiff sought judgment against the Defendant/Respondent for the following orders: -
 - a. A permanent injunction to restrain the Defendant, whether acting by its directors, officers, servants, employees, agents, assigns or otherwise howsoever, from infringing the Plaintiffs registered Design No. 752.
 - b. An order compelling the Defendant to efface the painting giving rise to infringement of the Plaintiffs Industrial Design No. 752.
 - c. An account of profits for unlawful use of or infringement to the Plaintiff's Industrial Design No. 752.
 - d. General damages for infringement to the Plaintiff's industrial Design No. 752.
 - e. Compensation for infringement to the Plaintiffs industrial Design No. 752.
 - d) Costs.



- g. Interest on (d), (e) and (f) above at commercial rates.
 - h. Such further or other relief as this Honourable Court may deem just and fair.
2. The Plaintiff however withdrew the suit at the interlocutory stage thus prompting the defendant to file its Bill of Costs which was through a ruling delivered on 2nd December 2019 taxed at Kshs.720,302.00.
 3. The Applicant now contests the said taxation and argues that the Taxing Officer unreasonably, unjustifiably and unjustly increased instruction fees by over 6 times to Kshs.500,000. The Applicant stated that the applicable law is paragraph I(k) of schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014, which prescribes instruction fees at Kshs.75,000.00;
 4. The Applicant contended that Taxing Officer failed to judiciously and/or properly exercise her discretion in the assessing the instruction fees thus awarding costs that are extremely high.
 5. The Applicant faulted that the Taxing Master for arbitrarily increasing the instruction fees and for arriving at a finding that is unfounded and unjustified as the Plaintiff/Applicant's suit was a straightforward claim of infringement of industrial design which was withdrawn at interlocutory stages.
 6. The Applicant argued that the Taxing Officer not only failed to appreciate the stage at which the suit was withdrawn and the reasons for and/or circumstances leading to the withdrawal. It was submitted that the withdrawal of the suit was made in good faith in order to save the court's time and resources and further, that the Plaintiff should not be penalized through an award of excessive costs.
 7. It was submitted that: -
 1. The impugned award not only constitutes unjust enrichment of the Defendant/Respondent, but it also unfairly punishes the Plaintiff/Applicant for a just and fair conduct; hence the exercise of discretion by the Taxing Officer was injudicious.
 2. There was/is nothing special on the general conduct of the proceedings to warrant increase of the instruction fees. The Taxing Officer's reasons for increasing the instruction fees are unreasonable, erroneous and amount to an error in principle.
 3. The impugned decision contradicts the spirit and principles of the Advocates Remuneration Order with regard to fair and reasonable recompense of costs expended by a party in a matter.
 4. The Taxing Officer misapplied the law and principle of taxation, thereby arriving at a wrong decision. We submit that Kshs.75,000.00 in instruction fees is sufficient in the circumstances.
 5. It follows therefore, that the fees for getting up should be based on the figure of Kshs.75,000.00. An award of Kshs.25,000.00 in fees for getting up and/or preparing the suit for trial is sufficient.
 6. There are sufficient reasons and/or grounds to warrant interference with the decision of the Taxing Officer; and we implore the Honourable Court to allow the



7. Plaintiff/Applicant's reference dated 13th May 2020 as prayed.
8. The Respondent opposed the Application through grounds of opposition wherein it asserts, inter alia, that the Deputy Registrar judiciously exercised her discretion as the taxing officer by taking into account the principles of taxations of costs and the provisions of the Advocate Remuneration Order.
9. The respondent observed that the plaintiff's claim, as stated at paragraph 13 of the Plaintiff was that:-

“By reasons of the matters aforesaid, the Plaintiff has suffered and continues to suffer loss of monthly income Kshs. 1,000, 000.00/= and further losses of business as a result of the Defendant's conduct/infringements hereinabove.”
10. According to the Respondent the plaintiff's said averment indicates that he expected to be compensated in the sum of Kshs.1,000,000 as loss of monthly income suffered which would translate to Kshs.12,000,000 within one year.
11. The Respondent submitted that the Plaintiff's contention that the instruction fees cannot be determined from the pleadings filed by the parties is mischievous as it is clear that had the Plaintiff succeeded in his claim against the Defendant he would not be arguing for lesser amount other than the sum pleaded.
12. The Respondent cited the decision in *Republic vs Capital Markets Authority Ex Parte Solomon Muyeka Alubala; National Bank of Kenya Limited (Interested Party)* [20211 eKLR where, under similar circumstances it was held: -

“...the Deputy Registrar stated unequivocally and rightly in her ruling that there were no novel issues. However, that in the same breath, she enhanced the basic instruction fees provided under the scale considerably from the minimum Kshs 100,000.00 to Kshs 1,350,000 13% times more than the prescribed minimum.... Moreover, that the value of the subject matter namely the penalty imposed on the ex parte Applicant, which the Deputy Registrar used to arrive at the conclusion that the matter was important to the parties, is not sufficient justification to warrant the exorbitant increase of the instruction fees. Lastly that even if the matter was indeed important to the parties, the Deputy Registrar did find that there were no novel issues raised in the proceedings.”
13. In dismissing the foregoing assertion the court held:-

“I have considered the arguments made by the parties on the taxation of the disputed items of the subject Bill of Costs. It is notable that the parties do not dispute that the taxation of the ex parte Applicant's Party and Party Bill of Costs dated 4th November 2019 is regulated by Schedule 6A of the Advocates (Remuneration). Order 2014. Paragraph I (i) of. The said Schedule 3 Provides as follows as regards instruction fees in constitutional petitions and prerogative orders:

“To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—



- i. where the matter is not complex or opposed such sum as may be reasonable but not less than 45,000
- ii. where the matter is opposed and found to satisfy the criteria set out above, such sum as may be reasonable but not less than 100,000
- iii. To present or oppose application for setting aside arbitral award- 50,000."

In addition, the applicable principles as regards setting aside or varying a taxation of a bill of costs are that a Court cannot interfere with the taxing officer's decision on taxation, unless it is shown that the decision was based on error of principle, or the fee awarded was manifestly excessive as to justify interference. These legal parameters were laid down in *First American Bank of Kenya vs Shah and Others* [2002] 1 EA. 64 at 69 by Ringera (as he then was) who delivered himself thus;

"First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle".

Specifically, as regards the taxing of instruction fees, the following guidelines were provided by Ojwang J. (as he then was) in *Republic vs. Ministry of Agriculture & 2 Others Ex parte Muchiri W'Niuguna & 6 Others*, (2006) eKLR:

- i. the proceedings in question were purely public-law proceedings and are to be considered entirely free of any private-business arrangements or earnings of the tea production sector;
- ii. the taxation of advocates' instruction fees is to seek no more and no less than reasonable compensation for professional work done;
- iii. the taxation of advocates' instruction fees should avoid any prospect of unjust enrichment, for any particular party or parties;
- iv. so far as apposite, comparability should be applied in the assessment of advocate's instruction fees;
- v. objectivity is to be sought, when applying loose-textures criteria in the taxation of costs;
- vi. where complexity of proceedings is a relevant factor, firstly, the specific elements of the same are to be judged on the basis of the express or implied recognition and mode of treatment by the trial judge;
- vii. where responsibility borne by advocates is taken into account, its nature is to be specified;
- viii. where novelty is taken into account, its nature is to be clarified;
- ix. where account is taken of time spent, research done, skill deployed by counsel, the pertinent details are to be set out in summarized form."



14. When confronted with a similar case in *Kipkorir, Tito & Kiara Advocates vs. Deposit Protection Fund Board* [2005] eKLR the Court of Appeal held as follows:-

“On 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.”
15. Taking a cue from the above decision I find that the only issue that falls for consideration is whether the Taxing Master exercised her discretion correctly and arrived at the correct decision on taxation.
16. In *Joreth Ltd vs Kigano & Associates* [2002] eKLR the court held 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 the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”
17. I have perused the impugned ruling on taxation and I note that the Taxing Master Rendered herself as follows on instructions fees: -

“Instruction fees is calculated from the value of the subject matter which ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable, the taxing officer is entitled to use his discretion to assess such instructions fees as he considers just taking into account, amongst other matters the nature and importance of the cause or the matter; the interest of the parties, the general conduct of the proceedings, any directions by the trial judge and all other relevant circumstances.”
18. The Taxing Master is also on record as having appraised herself of the applicable provision of the Advocates Remuneration Order being Paragraph 1(k) Schedule VI that provides for a minimum instructions fees of Kshs.75,000.00 if the suit is defended as was the case in the instant suit.
19. I further note that the Taxing Master also reminded herself of the threshold for the exercise of her mandate namely, that the Taxing Master has the discretion to increase the minimum amount after taking into consideration nature of the case. The present case involved an alleged infringement of Industrial Design. The Taxing Master also took into account the interests in the case and the general conduct of the proceedings before arriving at the figure of Kshs. 500,000 as the fair amount for instructions fees thereby taxing off Kshs. 1,500,000.
20. It is also evident from the record that the Taxing Master was alive to the need to be guided by principles of law delineating the parameters for the exercise of the said discretionary mandate, and in this regard she took into consideration the decision in the case of *Joreth Ltd vs Kigano & Associates*, civil Appeal No. 66 of 1999 and the case of *Peter Muthoka and Joseph Mumo Kivia vs Ochieng, Onyango, Kibet and Ohaga Advocates Civil Appeal No. 328 of 2017* where the basis for determining instructions fees was discussed.
21. On the general conduct of the parties, it is evident, from the record, that the litigation was initiated in November, 2014 with the main motion being filed together with the suit on 10th November 2014. The interlocutory application was however dismissed through a ruling delivered on 26th March, 2016. The matter then proceeded with other pre-trial preparations before it was withdrawn on 29th October 2018.



22. My finding is that even though the Applicant indicated, at the time of the withdrawal of the suit, that it was acting in good faith, one cannot rule out the fact that the Respondent had incurred costs in preparing for the case and prosecuting the interlocutory application. There has been no attack on the respondent's mode of preparation and presentation of his pleadings for consideration. As for time expended, it is clear that the same cannot be quantified but suffice is to say that the court notes that the litigation took a duration of almost 4 years.
23. I have taken into account the totality of the Taxing Master's reasoning during taxation and the settled principle that the court should not interfere with the Taxing Master's discretion in taxing bills of costs except where the Taxing Officer, erred in principle in assessing the costs. In the present case, I am unable to find that there was any error in principle in assessing the said costs. I find that amount awarded herein is not only appropriate but also a fair award as assessed instruction fees.
24. In conclusion, I find that the instant reference is not merited and I therefore dismiss it with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF NOVEMBER

2022.

W. A. OKWANY

JUDGE

In the presence of: -

Ms Mutuku for plaintiff/applicant.

Court Assistant- Sylvia

