



Kigen t/a Katwa & Kemboy Advocates v Reinhard (Miscellaneous Application 45 of 2022) [2023] KEELC 18287 (KLR) (22 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18287 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS APPLICATION 45 OF 2022**

EK MAKORI, J

JUNE 22, 2023

IN THE MATTER OF: THE ADVOCATES REMUNERATION

ORDER CHAPTER 16 LAWS OF

KENYA

BETWEEN

KATWA KIGEN T/A KATWA & KEMBOY ADVOCATES ADVOCATE

AND

JOYCE REINHARD CLIENT

RULING

1. I have two applications for resolution. Stay of execution of the orders emanating from the ruling of this court dated February 15, 2023 and a Reference filed dated October 4, 2022.
2. For the application for stay, this court in the application dated February 15, 2023 found that the firm of Chepkwony and Associates represented one Joyce Reinhard in the taxation in Misc Application No 25/2018. I see nothing to stay at all and need not belabour on the issue further.
3. The Reference filed attacks the Deputy Registrar's Taxation of the Bill of Costs dated July 18, 2022 by her ruling dated September 21, 2022.
4. The main attack on the Taxation is that the item on instruction fees was grossly overvalued and that the instruction fees ought to have been recorded based on the value disclosed in the ruling by Olola J dated October 2, 2020 whereby the Judge found that a retainer of Kshs 3,203,000/- was the real subject matter in issue and not the value of the subject matter in the main suit that is ELC No 108/2013 whose value was pegged at Kshs 79,522,471.80/-.
5. The other grievances raised were, that disbursements were unsupported.



6. That at the end by allowing a figure of Kshs 1,307,092.23/- in favour of the Respondent/Client - there was a misapprehension of the Principles of Taxation and the Taxing Master erred by failing to exercise discretion properly thereby arriving at an erroneous and exorbitant taxed amount.
7. The Applicant moved the court for the bill to be set aside.
8. On the part of the Respondent, it is averred that the Applicants failed to attend the taxation despite service.
9. On the merits of the bill, the Respondents averred that the Taxing Master exercised her mind properly and took into account the Principles of Taxation as set in the case of *Premchand Reinhand Ltd & Another v Quarry Services of East Africa Ltd & Another* [1972] EA 64 and *Joreth Ltd v Kigaro & Associates* [2002] 1 EA 92.
10. The Respondent argued that the bill relied on the earlier bills raised for a sum of Kshs 79,522,471/- and not 2,500,000/- as alleged by or proposed by the Applicant which bill was declined and dismissed.
11. The Taxing Master taxed off Kshs 15,161,272/- and left a balance of Kshs 1,044,627.79/- which amount in the thoughts of the Respondent was reasonable and fair.
12. The Respondent submitted that nothing was shown that attendance and other disbursements were never incurred.
13. The issues for determination are whether the bill of costs ought to be set aside, whether the Reference has merit, and who should bear costs.
14. I have considered the submissions and materials placed before me and the authorities cited. I have gone through Misc App No 25/2018, which is the one giving rise to the current Reference.
15. Misc Application No 25/2018 purely dealt with the Taxation of a Bill of Costs by Katwa Kigen and some Preliminary Objection raised by Joyce Reinhard.
16. After hearing all the sides in the matter the Judge made a finding that whereas the bill the Taxing Master was dealing with the disclosed sum of Kshs 79,522,471.80/-, The parties had agreed through retainer agreement that the amount due to the firm of Katwa Kigen was Kshs 3,203,000/-. The Judge stated:

“Similarly, in the matter before me, it is evident that the Advocate Client Bill of Costs filed by the Respondent herein on October 25, 2018 arises from the agreement herein. The parties executed on September 7, 2016 which agreement the Respondent would term to be non-binding. There is evidence that the applicant has acted on the agreement and paid Kshs 3,203,000/- to the Respondent. By that agreement, it is evident that the Advocate accepted to be paid fees that were less than that provided under the Advocates Remuneration Order.

He is therefore estopped by his conduct from demanding his rightful fees from the Applicant and this Court will not come to his aid to help him wriggle out of that relationship.

In the premises, I am persuaded that there is merit in both the Preliminary Objection and the application dated July 25, 2019. The Advocate–Client Bill of Costs filed herein dated October 25, 2018 cannot be subjected to taxation as the Deputy Registrar has no jurisdiction to tax the same. It is struck out as sought in the application with cost to the Applicant/Client.”



17. From the finding, in Misc Application No 25 of 2018, it follows that the Judge determined the value of the subject matter as Kshs 3,203,000/- and not Kshs 79,522,471.80/-.
18. What the Taxing Master was dealing with was a defence to counter the taxation under Misc Application No 25/2018 and not other previous suits.
19. Ordinarily this court cannot interfere with the discretion of the Taxing Master but can do so under the following circumstances as held significantly by Majanja J in *Brampton Investment Limited V Attorney General & 2 Others* [2013] eKLR citing the leading decisions on the principles to be followed in taxation and what the appellate court checks in a Reference:

“Both parties cited several well-known cases which elucidate the principles governing the assessment of costs. In the case of *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No 3)* [1972], EA 162 the Court outlined these principles as follows;

- (a) That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy,
- (b) That a successful litigant ought to be fairly reimbursed for the cost he has had to incur,
- (c) That the general level of remuneration of Advocates must be such as to attract recruits to the profession and
- (d) So far as practicable there should be consistency in the award made and
- (e) 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.

In the case of *Joreth Limited v Kigano & Another* [2002] EA 92 the court set out various factors that are to be considered in determining the instruction fee namely; the importance of the matter, general conduct of the case, the nature of the case, time taken for its dispatch and the impact of the case on the parties.

7. The cases I have cited also emphasise the principle that the taxing master is vested with discretion to increase or decrease instruction fees and that in exercising such discretion, the taxing officer must act judicially by taking into account relevant factors stipulated in the Advocates (Remuneration) Order including importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances. The court will only interfere with the discretion of the taxing master in certain circumstances, such as where the amount is either too low or too high as to occasion an injustice or where the taxing master errs in principle (see also *First American Bank of Kenya Ltd v Gulab P Shah & Others* [2002] 1 EA 61 per Ringera J).”

20. Consequently, basing my determination on the Principles of Taxation- the Taxing Master fell in error in Item No 1 when she reckoned the Instruction Fees at Kshs 79,522,471.00/- and not Kshs 3,202,000/- as pronounced by Olola J in his final ruling in Misc Application No 25/2018. The latter was the correct value of the subject matter, emanating from a retainer agreement, while the former arises from the parent file, which the Judge said, was a wrong figure to reckon the Advocate – client bill of costs that were in contention in Misc No 25/2018. It follows then that the finding by the Taxing master on instruction fees cannot stand and is hereby set aside.



21. On the other disbursement, the Applicant has not stated which items were wrongfully taxed. I will not disturb the Taxing Master's findings.
22. The Bill of Costs dated 18/7/2022 is re-taxed as follows
- Applicable Scale;
- The matter subject to taxation was filed in 2018. The scale to use is the Advocates Remuneration Order (2014) Schedule 6.
- Item Nos 1.
- The value of the Subject matter was reckoned by the Judge as Kshs 3,203,000/- under paragraph 1(b) giving a basic fee of Kshs 164,060/-
- As the matter was determined, summarily I tax the same at Kshs 75% of the basic fee which is Kshs 123,045/-
- As for getting up fees, it is not applicable as the matter was heard summarily.
- The Bill then is taxed thus:
- Instruction Fees Kshs 123,045.00/-
- Add VAT 15% Kshs 19,697.20/-
- Total Kshs 142,732.00/-
- Add disbursements of Kshs 740.00/-
- Grand Total Kshs 143,472.20/-
23. In the upshot the Deputy Registrar's orders in the ruling dated September 21, 2022 taxing the Respondents bill at a sum of Kshs 1,307,092.23/- is hereby set aside and replaced with Kshs 143,472.20/- for the Respondents.
24. There will be no order as to costs concerning the two applications.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS
22ND DAY OF JUNE 2023**

E.K. MAKORI

JUDGE

In the presence of:

M/s Waweru holding brief for Katwa Kigen for the Applicant

M/s Metto holding brief for Chepkwony for Respondent

Mr Songok for Joyce Reinhand for the Respondent

Court Clerk: Happy

