



Muri Mwaniki & Wamiti Advocates v Kenya Orient Insurance Limited (Miscellaneous Application 67 of 2019) [2022] KEHC 16705 (KLR) (19 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16705 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS APPLICATION 67 OF 2019
LM NJUGUNA, J
DECEMBER 19, 2022**

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES ADVOCATE

AND

KENYA ORIENT INSURANCE LIMITED CLIENT

RULING

1. The applicant herein filed the instant application dated August 05, 2022 and wherein he seeks for orders as enunciated on the face of the application.
2. The application is premised on the grounds on its face and further supported by the affidavit by Martin G Mwaniki and wherein among other issues, the applicant who has been in conduct of Embu Chief Magistrates Court Civil Suit No 111 of 2011 subject of the taxation herein, faulted the taxing officer for having failed to exercise her discretion properly and misdirecting herself in taxing of various items in the Bill of Costs relating to drawing, attendances, letters and making of copies. The applicant has urged this court to be pleased to tax the said items or in the alternative, the same be remitted to another Taxing Officer with directions on taxation. The chambers summons is supported by the annexed affidavit sworn on August 05, 2022.
3. The respondent despite having been served, did not file any response to the application and as such, the same is unopposed.
4. The Deputy Registrar (DR) via a ruling delivered on September 13, 2021, taxed the Bill at 107,524/= . It is this determination that has provoked the application herein, whereby, the applicant has prayed that this court be pleased to tax the said items as listed in the application and in the alternative, remit the items of the Bill of Costs to another taxing officer for taxation with directions on the taxation.
5. I have considered the application herein and it is my considered view that the main issue for determination is whether the application is merited.



6. It is trite that this court will only interfere with the decision of a taxing officer in cases where there has been shown to be an error of principle. In *Republic v Ministry of Agriculture & 20 Others Ex-Parte Muchiri W' Njuguna* [2006] eKLR, Ojwang J (Retired) stated as follows: -

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other...The 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 manifestly excessive as to justify an inference that it was based on an error of principle.”

7. Also in the case of *PZ Cussons East Africa Limited v Kenya Revenue Authority*, *supra*, the Judge cited the decision of the Court of Appeal in *Thomas James Artur v Nyeri Electricity Undertaking* [1969] EA 64 at page 69 that:

“Where there has been an error in principle, the court will therefore interfere, but questions solely of quantum are regarded as matters with which the Taxing Officers are particularly fitted to deal and the court will interfere only in exceptional circumstances.”

[See the Court of Appeal in the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR].

8. The applicant contended that the DR misdirected herself in principle in taxing of items Nos 3, 8, 77, 102, 106 and 112 relating to drawing without regard to the correct size and number of folios as provided under paragraph 17 of the ARO and calculated according to the exhibited documents in the applicant’s bundle of documents for the said items that were thus drawn to scale as provided for under paragraph 2 part II of schedule V.
9. That provision stipulates;
17. A folio shall for all purposes of this Order be deemed to consist of 100 words and any part of a folio shall be charged as one folio. A sum or quantity of one denomination stated in figures is to be counted as one word: eg. “£25,564 16s 8d.” is to be counted as three words, and “254 feet 11 inches” is to be counted as four words.
10. The above definition is necessary in taxing costs payable for drawing pleadings, making copies of documents and perusing documents. A perusal of the disputed items shows that the Deputy Registrar applied the proper schedule but disregarded the foregoing definition of the word folio.
11. That the learned DR erred in law and misdirected herself in principle in taxing off items Nos 5, 10, 27, 37, 45, 47, 55, 61, 67, 73, 79, 80, 82, 86, 108, 110, 113, 114, 116, 118, 120 and 122 relating to attendances to court and registry on the premise that they are not supported with evidence and proceedings are lacking, when the same is provided for under paragraph 3 part II of Schedule V and evidenced in the applicant’s List and Bundle of documents. The same should be awarded as per the scale making reference to the Lower Court file and proceedings therein.



12. In regards to Nos 6, 11, 28, 38, 46, 48, 56, 62, 68, 74, 81, 83, 85, 109, 111, 115, 117, 119, 121 and 123 relating to journeys from home, the remuneration order provides that:

For every day of not less than seven hours employed in travelling 15,000 ; Where a lesser time than seven hours is so employed, per hour 2,500/=.

13. In this regard, the pleadings filed herein shows that the applicant is based in Nairobi unless there is evidence to the contrary. A journey to and from Nairobi would ordinarily take between four and five hours depending on the traffic. The amount of Kshs 8,400/= charged is reasonable.

14. For items Nos 4, 9, 13, 15, 20, 23, 31, 34, 36, 40, 43, 50, 52, 54, 58, 60, 64, 66, 72, 78, 89, 91, 94, 97, 100, 105 and 107 relating to making of copies of pleadings and court documents. As a matter of common notoriety, copies are done in triplicate being copies for the party filing, the court and a copy for the opposing party while letters are done in duplicate, the original to the addressee and a file copy for the addressor. The DR should take that into account when fixing the above items.

15. For the items Nos 12, 14, 19, 22, 25, 30, 33, 35, 39, 42, 49, 51, 57, 59, 63, 65, 71, 75, 84, 88, 90, 93, 96 and 99 relating to letters to client and advocates, the same should be taxed under paragraph 17 8and should take into account the correct sizes and the number of folios.

16. For items Nos 7, 16, 17, 18, 21, 24, 32, 41, 44, 53, 69, 70, 87, 92, 95, 98 and 101 relating to perusal of notices, letters and court documents, the same to be taxed taking into account the correct sizes and number of folios.

17. In the end, the orders that are commendable to me are as follows;

- i. That the Bill of Costs herein is hereby remitted to the taxing master to be taxed afresh in regard to the items that were not properly taxed as per the directions given hereinabove.
- ii. No order as to costs.

18. It is so ordered.

Delivered, dated and signed at Embu this 19th day of December, 2022.

L NJUGUNA

JUDGE

.....**for the Applicant**

.....**for the Respondent**

