



**Maina v Maina King'ara & Company Advocates (Miscellaneous Application E163 of 2022) [2022] KEHC 16446 (KLR) (Civ) (16 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16446 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS APPLICATION E163 OF 2022**

**MA ODERO, J**

**DECEMBER 16, 2022**

**BETWEEN**

**NANCY NJERI MAINA ..... APPLICANT**

**AND**

**MAINA KING'ARA & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the Chamber Summons dated August 12, 2022 by which the applicant/Client Nancy Njeri Maina seeks the following orders:-
  - ' 1. Spent
  2. Spent
  3. That the mathematical errors of calculation/computation contained in the Taxing Master's decision be corrected.
  4. That the Deputy Registrar's decision to be set aside and or varied by reducing the fees awarded taking into account the total awarded accounts, taxed off accounts and the amounts paid prior to taxation.
  5. That the costs of this application be provided for.'
2. The summons which was premised upon Rule 1(1) & (2) of the *Advocates Remuneration Order* and all other enabling provisions of the law and was supported by the Affidavit of even date and the Further Affidavit dated (undated) both sworn by the Applicant.



3. The Respondent Maina King'ara & Company Advocates opposed the application through their Replying Affidavit dated August 30, 2022 sworn by Rhoda Maina an Advocate of the High Court of Kenya practicing with the Respondent law firm.

## **Background**

4. The Reference arises from the Ruling delivered by Hon Sitati Taxing Master following taxation of the Bill of Costs dated November 29, 2021. The said Bill of Costs had been filed by the law firm following instructions issued to them by the Applicant in respect of Succession Cause No 1017 of 2000.
5. Vide a Ruling delivered on July 29, 2022 the Hon Taxing Master taxed the bill at Kshs 115,487.50. Being aggrieved by the decision of the taxing master the Applicant/Client filed this reference.
6. Firstly the Applicant alleges that there existed glaring mathematical/computation errors in calculating the difference between the amount claimed by the Respondent and the amounts taxed off resulting in an erroneous total. That in determining the overall figure the Taxing Master failed to take into account all the amounts taxed off thereby arriving at an erroneous total. The Applicant contends that this was a fundamental error in principle which the High Court has the mandate to correct.
7. According to the Applicant the total taxed off amount should be Kshs 84,700 and not Kshs 65,454.50 as indicated by the Taxing Master in Paragraph 12 of her Ruling. That therefore sequentially the total amount awarded by the Taxing Master including VAT and filing fees before the increase by half should have been Kshs 62,225 and not Kshs 73,125 as indicated by the Taxing Master in Paragraph 11 of her Ruling.
8. The Applicant avers that she and the Deceased jointly owned 1,411 shares in Standard Chartered Bank. That the total value of the shares was Kshs 176,375 and not Kshs 600,000. The Applicant complains that the Respondent is set to benefit unjustly from the erroneous figure awarded.
10. Finally, the Applicant avers that the Taxing Master erred in failing to take into account the sum of USD 300 which the Applicant had already sent to the Respondents telephone number via waive wallet, which amount having been considered would have resulted in a much lower total figure. For the above reasons the Applicant prays that the Bill of Costs be re-taxed.
11. The Respondent opposed this Reference. The Respondent asserted that the Reference was time-barred having been filed outside of the fourteen (14) day period allowed in law.
12. The Respondent stated that they were instructed by the Applicant to act for her in Succession Cause No 1017 of 2000. That the Respondent acting upon said instructions filed an application seeking to have the confirmed Grant rectified.
13. Thereafter the Applicant discovered 105 shares at Standard Chartered Bank, which had been omitted from the list of Assets. The Applicant later informed the Respondent that the Bank had informed her that the Deceased actually held over 15,000 shares and asked that the Grant be further rectified. The Respondent then moved back to court and obtained the Amended rectified Certificate of Confirmation.
14. The Respondent avers that finally upon requesting the Applicant to pay their fees for work done the Applicant neglected and/or refused to do so. The Respondent therefore filed a Bill of Costs dated November 29, 2021 for taxing by the Hon Deputy Registrar.
15. The Respondent contends that the instant reference is merely an attempt by the Applicant to delay/evade payment of the Respondents fees. They urge the court to dismiss the same with costs.



## Analysis and Determination

16. I have carefully considered this reference filed by the Applicant the Replying Affidavit of the Respondent as well as the written submissions filed by both parties. The two main issues for determination are:-
- (i) Whether the Reference is time-barred.
  - (ii) Whether there exists sufficient grounds to interfere with the Ruling of the Taxing Master dated July 29, 2022.
  - (i) Whether the Reference is time-barred.
17. The Respondent urged that this Reference be struck out on the grounds that the same was time-barred. Paragraph 1 of the Advocates (Remuneration) Order provides as follows:-
- (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.
18. In the case of *Nyakundi Advocates Vs Kenyatta National Hospital Board [2005] eKLR* it was held as follows:-
- ' Under Rule 11 (2) of the Advocates (Remuneration) Order quoted above, a definite time frame for filing a reference is given. It is fourteen (14) days from the receipt of the reasons. If an Objector is delayed in making his/her reference he/she may apply for enlargement of time to make the reference under Rule 11(4) of the same Order.'
19. Similarly in *Twiga Motor Limited v Hon Dalmas Otieno Anyango [2015] eKLR* the court observed that:-
- ' The time limits in Rule 11 of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.'
20. In this case the Ruling by the Taxing Master was delivered on July 29, 2022. The reasons for the taxation were contained in the said Ruling. The applicant filed this reference on August 12, 2022 which falls within the fourteen (14) day period provided for in Paragraph 11(2). Accordingly I find that this Reference was filed in a timely manner and the same is not time-barred.
- (ii) Should the Reference be allowed
21. The circumstances under which the High Court can interfere with the decision of a Taxing Master's exercise of his/her discretion are now well settled and were elucidated in the case of *First American Bank Of Kenya – Vs – Shah & Others (2002) EA 54* as follows –
- ' Firstly, that 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



so manifestly excessive as to justify an inference that it was based on an error of principle; secondly, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction the trial judge; thirdly, if the court considers that the decision of the Taxing Officer discloses errors of principle, the normal practice is to remit it back to the Taxing Officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment and the court is entitled to upset a taxation because in its opinion, the amount awarded was high; fourthly, it is within the discretion of the Taxing officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary.'

22. Likewise on the issue of quantum the general rule is that this is an area in which the Taxing Officer is more experienced. Thus the court will only interfere in exceptional circumstances where there is shown to be a clear error of principle or if the sums accorded are so manifestly high or low as to lead to an injustice. In *JOreth Limited Vs Kigano And Associates [2002] EA* it was held:-

' We would at this stage point out 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 importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances. That is what CK Njai Esq did when he said:

As we do not know the capital value of the property in dispute; one I believe is left to determine the matter on the general discretion donated to the taxing officer to tax a bill, based on the importance of the matter to the parties, complexity and the responsibility placed on shoulders of Counsel.'

23. Similarly as *James Vs Nyeri Electricity [1961] EA* the court stated as follows:-

' Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will intervene only in exceptional cases. An example of such an exceptional case is that of *Haiders Bin Mohamed Elmandry and Others – v Khadija Binti Ali Bin Salim (4) 1956, 23 EACA 313*, in which an instructions fees of the 9,000/- was considered so excessive as to indicate that it must have been arrived at unjudicially or on erroneous principle.'

24. In this case the Applicant averred that she made a payment of USD300 to the Respondent (Advocate) which amount was not taken into account by the Taxing Officer. Annexed to the supporting Affidavit is the evidence of a remittance of USD 300 to Rhoda Maina Advocate through M-pesa (Annexure 'NN-2'). The Exchange rate was indicated to be Kshs 107 to one USD thus the amount remitted amounted to Kshs 32,100

25. The Respondent has not denied receiving this amount from the Applicant. Indeed the Respondent made no response at all to the question of this payment. If the payment was for something other than legal fees then the respondent ought to have so indicated in her replying Affidavit. The Applicants claim regarding this payment is therefore uncontested.



26. A perusal of the Ruling also indicates that the Taxing Master did not take into account the payment of USD300. It would appear that the Taxing Officer was not made aware of this payment at the time the Bill was being taxed. For this reason I find there existed an error in the taxation. Accordingly the same is set aside. The bill of Costs dated November 29, 2021 is hereby returned to be taxed a fresh by a different Deputy Registrar. Each party to bear its own costs.

Dated in **Nairobi** this **16<sup>th</sup>** day of **December, 2022**.

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**MAUREEN A. ODERO**

**JUDGE**

