



REPUBLIC OF KENYA



**Nanji v Dhanji (Environment & Land Case 112 of 2015)
[2023] KEELC 18088 (KLR) (20 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18088 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 112 OF 2015
NA MATHEKA, J
JUNE 20, 2023**

BETWEEN

SADRU NANJI PLAINTIFF

AND

AL NASHIR DHANJI DEFENDANT

RULING

- 1 The Application is dated August 30, 2022 and is brought under regulation 11(1) and (2) of the [Advocates Remuneration Order](#) and under Sections 1B and 3A of the [Civil Procedure Act](#) seeking the following order;
 1. That this Honourable Court sets aside the ruling dated July 27, 2022 on the Plaintiff's Party & Party Bill of Costs dated June 11, 2021 and award such amount as it deems just.
- 2 It is based on the grounds that the Taxing Master erred in taxing the bill at Kshs. 539, 088/=. That the Taxing master erred in failing to consider the submissions filed on June 9, 2022 on behalf of the defendant and thus arriving at an erroneous figure of taxation on the bill of costs and is supported by the annexed supporting affidavit of Michael O. Oloo.
- 3 Defendant's written submissions stated that the main grounds are that the Taxing Master erred in taxing the bill at Kshs. 539,088.03/ = and that he did so without considering the submissions filed by the Defendant on the June 9, 2022 and thereby arriving at a wrong figure. That the suit herein was filed in the year 2015 and therefore the relevant [Advocates Remuneration Order](#) is [Advocates Remuneration \(Amendment\) Order 2014](#). That the Court awarded Kshs. 861,348/ = and the instructions fees for the same is Kshs 120,000/ = and not Kshs. 128,914.37/ = as taxed by the Taxing Master. It goes that getting up fees should be $(1/3 \times 140,000) = 40,000/=$ and not Kshs. 42,971/=.
- 4 The Plaintiff/Respondent submitted that the application is frivolous as it does not point at any particular error or fault allegedly committed by the Taxing Master in his taxation of the bill of



costs especially that the court acknowledges having received and taken to account both the parties' submissions. The Applicant cannot contest items they had initially not contested. That the application is sought to be prosecuted without the Applicant first following up with the Taxing Master to ascertain the reasons for taxing the bill of costs as done and it is hence premature. That the application is a delaying tactic and abuse of the court process.

5 This court has considered the application and the submissions therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the [Advocates Remuneration Order](#) which provides as follows:

- (1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the 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.”

6 Be that as it may, the principles of varying or setting aside a Taxing Master's decision are set out in the cases of *First American Bank of Kenya vs Shah and Others* (2002) EA 64 and *Joreth Ltd vs Kigano and Associates* (2002) 1 EA 92, that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law. In *First American Bank of Kenya vs Shah and Others* (2002) E.A.L.R 64 the court held that;

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”.

7 These principles reiterate the position of the Court of Appeal in *Joreth Ltd vs Kigano & Associates* (2002) eKLR, where the said Court held that a Taxing Master in assessing costs to be paid to an advocate in a bill of costs was exercising her judicial discretion and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously, and in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the Taxing Master is excessive to amount to an error in principle.

8 The Applicant in the instant application contends that being dissatisfied with the Taxing Officer's decision. That the Taxing Officer erred in law and in fact by not considering their submissions. The Taxing Officer should have used the relevant [Advocates Remuneration \(Amendment\) Order 2014](#) as the suit was filed in 2015 and the instruction fees should have been taxed at Kshs. 120,000/ and not Kshs. 128,914.37/=.

9 In [Republic vs. Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'Njuguna](#) (2006) eKLR Ojwang, J (as he then was) expressed himself 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. Of course it would be



an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case 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 by the trial judge. Needless to state not all the above factors may exist in any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him. 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...A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved...Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularised justification of the mode of exercise of any discretion provided for...The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs...”

10 I have perused the court record and the ruling by the Taxing Master dated July 27, 2022 and find that he did use the Schedule 6 of the *Advocates Remuneration (Amendment) Order of 2014*. I find no error in principle and the fees awarded are not excessively high. I find that there is no error by the Taxing Master in the assessment. Consequently, I find that the application is not merited and I dismiss it with no orders as to costs.

11 It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 20TH JUNE 2023.

N.A. MATHEKA

JUDGE

