



**Charles M. Karuweru t/a Karuweru & Co. Advocates v Maisha Flour Mills Ltd  
(Miscellaneous Application 24 of 2017) [2021] KEHC 443 (KLR) (29 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 443 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS APPLICATION 24 OF 2017**

**A MSHILA, J**

**OCTOBER 29, 2021**

**BETWEEN**

**CHARLES M. KARUWERU T/A KARUWERU & CO.  
ADVOCATES ..... APPLICANT**

**AND**

**MAISHA FLOUR MILLS LTD ..... RESPONDENT**

**RULING**

1. The Chamber Summons is dated the 11<sup>th</sup> December, 2018 and is brought under the provisions of Rule 11 of the *Advocates Remuneration Rules*, Section 3A and 3B of the *Civil Procedure Act*; the applicant seeks the following orders;
  - i. That by way of reference this court be pleased to review and/or set aside the Taxing Master's ruling dated 9/11/2018 of the Advocate Client Bill of costs dated 30/03/2017;
  - ii. That there be a stay of execution of the taxed amount of Kshs.405,776/70 till the reference is heard and determined;
  - iii. The costs of the application be provided for.
2. The parties canvassed the application by filing and exchanging written submissions; hereunder is a summary of their rival submissions.

**Applicant's Submissions**

3. The application was premised on the grounds on the face of the application and on the Supporting Affidavit made on 11/12/2018 by Harmesh Kumar Mahan Advocate who deponed that the Applicants claim which is a reference raises a very fundamental point of law. In that the taxing master



did not tax the bill as provided for under the Rules and therefore the ruling was not based on law principles and facts and should be set aside.

4. The Bill of Costs was as between Client and Advocate and was not Party to Party costs. Under the provisions of the Advocates Remuneration Order 2014 the Bill ought to have been taxed under the provisions of Schedule 6B which provides for fees chargeable; Schedule 6B(c) relates to fees agreed by the parties; the schedule provides for Advocates Fees only with an additional chargeable fee at 50% of the instruction fee and the Rules specifically provides for only instruction fees and clearly makes no mention of costs, either taxed or otherwise.
5. In this instance the subject matter was Kshs.1,817,225/- as indicated at Item No.1 of the Bill of Costs. Fees for such a figure is the sum of Kshs.90,000/- and 50% of this amount is Kshs.45,000/- which when added to the fees brings the total figure to Kshs.135,000/- which is the respondents rightful entitlement; the Act stipulates that the additional 50% would cater for any attendances or services rendered to the client.
6. The Applicant submitted that the taxing master did not take into consideration the objections raised and that the Act differentiates between COSTS and FEES and the formula to be applied. Therefore, the taxing master misdirected herself on the approach to Advocate/Client Bill. The taxing master wrongly interpreted Schedule 6B of the Advocates Remuneration Order 2014 and therefore applied wrong principles of law.
7. All in all, the Applicant prayed that the application be allowed with costs; case law relied on which deals with the right formula in Advocate/Client Bill of Costs is HC MISC. 22 OF 2017 – Charles M.karweru Vs Maisha Flour Mills Limited.

#### Respondents Case

8. The application was opposed and the Respondent submitted that under Schedule 6B an advocate is enjoined to itemize each and every particular charge as per the Remuneration Order in 'A' and the same be increased by half and VAT is added to the aggregate amount. The remuneration does not indicate that the fees are as prescribed in 'A(1)' as the Applicant seems to suggest and the law is clear and refers to the whole of Schedule 'A'.
9. Therefore the advocate is enjoined to itemize each and every particular charge as per the Remuneration Order in Schedule 'A' and then the same is increased by half and VAT added to the aggregate. That the figure of Kshs.145,380/- is proper instruction fees on a claim of Kshs.1,817,225/-. Indeed if this court were to make a Ruling it can only indicate that the instruction fees should not be less than Kshs.90,000/- as conceded by the applicant; the rest of the items should be left as taxed by the taxing master.
10. The authority cited is by a court of concurrent jurisdiction and does not bind this court and is only persuasive in nature. The Respondent prayed that the Reference herein be dismissed as it was without merit.

#### Issues For Determination

11. After reading the submissions filed herein this court finds only one issue for determination is;
  - i. Whether the taxing master's decision was based on an error of principle.

#### Analysis

12. The Applicant's case was that being dissatisfied with the decision of the taxing master delivered on the 9/11/2018 it instructed its counsel to file a Reference against this decision;



13. The applicable principles on whether to interfere with the taxing masters' decision is found in the case of *4MB Mining Limited c/o Ministry of Mining Juba Republic of South Sudan vs Misnak International (UK) Limited; Total Link Logistics & 2 others (Interested Parties) [2021] eKLR*; where the court held as follows;

‘...17. There is no gainsaying here that the circumstances under which a judge of the High Court interferes with the taxing officers exercise of discretion are now well established and have informed a consistent precedent for this court. The principles are;

- a. That the court cannot interfere with the taxing officers' 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/low as to justify an inference that it was based on an error of principle;
- b. It would be an error of principle to take into account irrelevant factors or omit to consider relevant factors and, according to the 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 by the taxing master;
- c. 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 not entitled to upset a taxation because in its opinion, the amount awarded was high;
- d. 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;
- e. The Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
- f. The full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;
- g. The mere fact the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocates unfamiliarity with the basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary....’

14. Schedule 6B of the Advocates Remuneration(Amendment) Order 2014 provides the minimum fee as between Advocate and Client; according to the schedule at (a) the minimum fee shall be the fees prescribed in ‘A’ above increased by 50%; at (b) if the fees are ordered by court this amount shall be enhanced by 50%; and lastly at (c) if the parties agree on the fees then the amount shall then be enhanced by 50%.



15. The Schedule is clear as it only refers to fees and the formula that is applicable. In this instance the subject matter was Kshs.1,817,225/- as indicated at Item No.1 of the Bill of Costs. The fees for such a figure would be in the sum of Kshs.90,000/- and 50% of this amount is the sum of Kshs.45,000/- which when added to the Kshs.90,000/- brings the total figure to Kshs.135,000/- which is found to be the Respondents rightful entitlement.
16. There is a clear stipulation in the Schedule that the additional 50% would cater for the attendances or services rendered to the client. The Schedule makes no reference to costs and the Respondent is not entitled to any other sum other than the fees as provided for.
17. For those reasons this court is satisfied that the taxing masters' decision was based on an error of principle, leading to an award that was manifestly excessive and this court further finds that there is good reason that justifies an interference with the decision.

#### Findings And Determination

18. In the light of the foregoing this court makes the following findings and determinations;
  - i. The application is found to have merit. This court finds that the Bill of Costs dated 30/03/2017 was taxed using wrong principles and the taxing masters' decision is hereby set aside;
  - ii. The Bill of Costs is hereby remitted back for taxation before a different taxing master;
  - iii. There shall be no order as to costs.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 29<sup>TH</sup> DAY OF OCTOBER, 2021.**

**FULL REASONS DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**HON. A. MSHILA**

**JUDGE**

In the presence of;

Miss Maina holding brief for Kamweru

No appearance for Mr. Mahau for the Respondent

