

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 359 OF 2019

STEPHEN N GIKERA T/A

GIKERA & VADGAMA ADVOCATES.....APPLICANT

VERSUS

JAMES M GATOME.....RESPONDENT

R U L I N G

1. The application dated 13th May, 2019 seeks orders that:

1. That this honourable court be pleased to vary and/or set aside the Taxing Officer's ruling delivered on the 16th of April, 2019 on the Advocate/Respondent's Bill of Costs dated the 11th October 2018 by decreasing the amount payable to the Advocate under Schedule 7 of the Advocates (Remuneration) (Amendment) Order 2014 on cost of proceedings in subordinate Court.

2. That this honourable court be pleased to exercise its inherent jurisdiction and re-assess the fees due to the Advocate/Applicant in respect of the entire Bill of costs dated 11th October, 2018 and make a finding on the same.

3. That in the alternative, the honourable court be pleased to refer the Bill of Costs back for taxation before another taxing master.

4. That this honourable court be pleased to make such other and/or further orders as it may deem just and fit to make in the circumstances.

5. That the costs of and occasioned by this application be provided for.

2. The Advocate/Client Bill of costs the subject of this reference was taxed at Ksh.301,484/= as per the ruling herein delivered on 16th April, 2019. The Client is aggrieved by the said taxation on grounds that the instruction fees of Ksh.270,123.20 allowed by the Taxing Officer in item No. 1 for instruction fees is excessive and based on the wrong value. It is averred that there was a change of Advocate before the conclusion of the matter. That a sum of Ksh.150,000/= already paid was not taken into account, that some of the items allowed were not drawn to scale and are not provided for under Schedule 7 of the Advocates Remuneration Order and that the Taxing Officer erred in principle by proceeding under Schedule 6 thereof.

3. In the replying affidavit filed in opposition to the application. It is stated that the suit that was filed against the Client herein was claiming the sum of Ksh.8,004,928.64. That the matter was complex and required excessive research and that the Bill was drawn to scale in accordance with Schedule 7 of the Advocates Remuneration Order. It is further deponed that the Advocate is entitled to full instruction fees as the matter had already been set down for hearing. That the Ksh.150,000/= payment was duly acknowledged and the same deducted.

4. I have considered the application, the response to the same and the submissions filed by the respective counsel for the parties.

5. The ruling by the Taxing Officer states the items drawn to scale but is silent on the rest of the items including item No. 1 on instruction fees. The ruling fails to give any reasons on how the rest of the figures in the Bill other than the ones said to have been drawn to scale were arrived at. It is therefore difficult to tell how the Taxing Office arrived at the total sum of Ksh.301,484/=. It is not possible to tell whether the Taxing Officer took into account the nature of the matter or whether the matter proceeded to conclusion or not; or whether the matter was finally settled and the general conduct of the matter (see for example **First American Bank of Kenya Ltd v Shah & others 2002 1EA**)

6. With the foregoing, I find that the Taxing Master erred in principle due to failure to reflect the method of assessment. Consequently, I set aside the ruling by the Taxing Officer delivered on 16th April, 2019 and refer the Bill of Costs dated 11th October, 2018 for taxation before another Taxing Officer.

Dated, signed and delivered at Nairobi this 29th day of May, 2020

B.THURANIRA JADEN

JUDGE