



Muhoho v S.M.Gachie t/a Gachie Mwanza & Co. Advocates (Miscellaneous Case 024 of 2021) [2020] KEHC 9219 (KLR) (Family) (23 June 2020) (Ruling)

Neutral citation: [2020] KEHC 9219 (KLR)

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

MISCELLANEOUS CASE 024 OF 2021

AO MUCHELULE, J

JUNE 23, 2020

IN THE MATTER OF THE ADVOCATES/CLIENT BILL OF COSTS

BETWEEN

CHRISTINE NGUHI MUHOHO APPLICANT

AND

S.M.GACHIE T/A GACHIE MWANZA & CO. ADVOCATES RESPONDENT

RULING

1. In the High Court Succession Cause No. 1163 of 2011 In the Matter of the Estate of Rosemary Wanjiku Waithaka the grant of letters of administration intestate had been issued and confirmed to one Jacinta Njahira Mwangi. The applicant Christine Nguhi Muhoho instructed the respondent S.M. Gachie T/A Gachie Mwanza & Co. Advocates to file summons for the revocation of the grant and summons for the confirmation of the grant. The respondent entered appearance and filed the two applications. When the parties were not able to agree on fees, the respondent filed a bill of costs which the applicant opposed. The Taxing Officer taxed the bill following written submissions.
2. The advocate/client bill of costs that was dated 2nd December 2020 asked for Kshs.3,500,000/= being instructions fees. The total bill was 3,709,576/=, then add 50% of Ksh.1,854,838/=, and VAT at 17% of 890,322/= . The grand total was Kshs.6,454,836/24, then disbursements. The bill was allowed at Kshs.532,604/=
3. In the present application dated 6th September 2021, the applicant asked that the court sets aside the Taxing Officer's decision delivered on 23rd February 2021 allowing the advocate/client bill of costs dated 2nd December 2020 at Ksh.532,604/= It was sought that the bill of costs be retaxed by another Taxing Officer, or that this court retaxes the bill of costs.



4. In the grounds and supporting affidavit, it was the applicant's case that allowing instructions fees at Kshs.150,000/= was an error in principle as the figure was manifestly high and that the Taxing Officer failed to take into consideration that the respondent had only been instructed to institute interlocutory applications and not to institute the substantive petition for grant of representation or file an objection to it; that the instruction fees ought to have been taxed based on each application filed by the respondent. Secondly, that the Taxing Officer had erred in principle in not taking into account the value of the subject estate of the deceased and by holding that the same had not been proved and yet the petition had in Form P & A 5 shown that the estate was worth Kshs.500,000/=. Thirdly, the applicant enumerated items that were allowed when they were not proved, or when they were not provided for under Schedule 10 of the Advocates Remuneration Order. For some items, the applicant claimed that they should have attracted lesser amounts. Lastly, that the Taxing Officer had erred in principle when he taxed the bill at Kshs.532,601/= which was manifestly high, given that the value of the estate was 500,000/=.
5. The respondent filed a replying affidavit sworn on 1st February 2022 in which he defended the taxed fees. He defended the exercise of discretion by the Taxing Officer whom he said had properly and correctly corrected interpreted the Advocates Remuneration Order and come to the correct amounts. He stated that the Taxing Officer was guided by the supporting documentations, and that the items that the applicant has faulted were clearly provided for by the Advocates Remuneration Order. He swore that the estimated value of the estate as Kshs.500,000/= had been erroneously given by the petitioner in the petition, and that was why the Taxing Officer could not rely on it.
6. In the ruling by the Taxing Officer, it was noted that the respondent had sought Kshs.3,500,000/= instructions fees on the basis that the estimated value of the estate was Kshs.100,000,000/=. The Taxing Officer indicated that:-

“The value of the property is also not proven. I therefore find the amount of Kshs.3,500,000/= excessive and reduce it to Kshs.150,000/=”
7. The Court of Appeal in Joreth Ltd -v- Kigano & Associates [2002]IEA 92 held that:-

“The value of the subject matter of a suit for 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 nor ascertainable the Taxing Officer is entitled to use his discretion to assess such instructions fees as he considers just, taking into account amongst other matters, the nature and importance of the case or the matter, the interests of the parties, the general conduct of proceedings.”
8. In the petition, the estimated value of the estate was Kshs.500,000/=. Infact it was the respondent who annexed to the bill of costs the affidavit that had been filed by the petitioner in support of the petition for letters of administration intestate (Form P & A 5). In it the estimated value of the estate was Kshs.500,000/=. This was the respondent's own evidence to support the bill of costs. He was estopped from claiming that that estimate was erroneous. In any case, he did not ask the Taxing Officer to call for the valuation of the estate. The Taxing Officer consequently fell into error to say that the value of the estate had not been proved.
9. Further, it was important for the Taxing Officer to consider that the respondent had joined the cause to seek revocation and confirmation. She was supposed to determine whether the instructions fees was based on the instructions of the two applications, or on the value of the subject matter. The Officer



was also supposed to consider whether, infact, the instructions fee was to be based on the value of the applicant's stake in the estate.

10. I also note that the Taxing Officer did not give reasons why she settled for Kshs.150,000/= when the Advocates Remuneration Order 2009 and Advocates Remuneration Order 2014 provided for Kshs.4,500/= and Kshs.30,000/=, respectively, being instructions fees.
11. As for items 14, 53, 57, 77, 83, 94, 96, 98, 100, 105, 106, 121, 126, 127, 132 and 137, the Taxing Officer indicated an amount against each without explanation, and without indicating whether any evidence had been called by the respondent to prove it. That was a wrong exercise of discretion. A court's discretion is supposed to be based on evidence. It is a judicial discretion. When the Taxing Officer attached an amount to each of the items without calling for evidence from the respondent to prove each item, that was arbitrary on the part of the Officer. That was not a proper exercise of the discretion that the law placed on her to fix quantum on each item in the bill of costs. In *Premchand Ranchand Ltd & Another -v- Quarry Services of East Africa* [1972]EA 162, it was held that this court will not ordinarily interfere with the Taxing Officer's exercise of discretion except where it is shown that, in awarding costs, the Taxing Officer failed to take into account factors that he should have taken into account or took into account irrelevant factors which led to an injustice.
12. In all, I determine that the taxation was wholly erroneous and that caused injustice to the applicant. The result is that I allow the reference with costs, set aside the Taxing Officer's taxation delivered on 23rd August 2021 and remit the bill of costs dated 2nd December 2020 to fresh taxation by another officer.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2020

A.O. MUCHELULE

JUDGE

