



REPUBLIC OF KENYA



KENYA LAW
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**Mohamed v Abass (Environment and Land Miscellaneous Application
64 of 2022) [2023] KEELC 20065 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20065 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 64 OF 2022
NA MATHEKA, J
SEPTEMBER 27, 2023

BETWEEN

MEIMUNA ABDULLAH MOHAMED APPLICANT

AND

MOHAMED ANWAR ADIRAHMAN HAJI ABASS RESPONDENT

RULING

1. The application is dated October 7, 2022 and is brought under rules 2 and 11 of the [Advocates Remuneration Order](#) and under section 3A of the [Civil Procedure Act](#) cap 21 seeking the following orders;
 1. That the decision of the Taxing Master delivered on June 15, 2022, in so far as the same relates to the reasoning and determination pertaining to the defendant/applicant's Bill of Costs dated March 24, 2021 and all other consequential orders made thereafter be set aside;
 2. That this Honourable Court be pleased to refer the matter back for retaxation of the defendant/applicant's Bill of costs dated March 24, 2021, with proper and appropriate directions thereon;
 3. That in the alternative, this Honourable Court do exercise its inherent jurisdiction and be pleased to re-tax the item relating to instruction fees, getting up fees and the VAT charges in the Defendant/Applicant's Bill of Costs dated March 24, 2021, afresh and/ or make appropriate directions for taxation afresh;
 4. That the costs of this application be awarded to the applicants.
2. It is based on the grounds that the Taxing Officer's decision on taxation is based on an error of principle. That as a result of the Taxing Officer's error of principle, the Taxing Officer awarded a party and party



costs that was manifestly low as to be unjust and detrimental to the Applicant and that the Taxing Master did not exercise his jurisdiction in taxing the said Bill of Costs judiciously.

The respondent stated that schedule 6 of the 2006 *Advocates Remuneration Order* provides at part 1 (a) and (b) instruction fees would be applied when the value of the subject matter can be determined from the pleadings, judgement of settlement and at part (l) where the value cannot be determined from pleadings, judgement or settlement (like in this particular case) such sum as may be reasonable but not less than 8,400/ =. That there being no value of the suit property as prescribed above, the Honourable Taxing Master exercised his discretion as he considered just by increasing the instruction fee from 8,400/ = to Kshs.150,000. Getting up fees being a third of the instructions fees, was taxed to scale. That since 29th June 2022 the Applicant has not shown any steps taken, not even a follow up letter four months down the line. The Applicant cannot therefore fault the Taxing Master for the laxity of her advocates. That this Honourable Court should not interfere with the Taxing Masters decision based on reasons advanced in the Taxing Masters ruling delivered on June 15, 2022 and that the Applicants application by way of a reference dated November 7, 2022 be dismissed with costs to the respondent.

3. 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.”

4. 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”.

5. 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.



6. 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...”

6. The Taxing Master in his ruling dated September 21, 2022 provided that the taxation of the matter would be based on Remuneration (Amendment) order of 2006,2009 and 2014. Under Item one the taxing master based his calculations on schedule 6 (1) b of the 2006 Advocates Remuneration order and taxed it at Kshs 150,000/= enhancing it from Kshs. 8,4000/=. He considered that the nature of the suit and that it involved many parties in reaching that decision. He noted that the valuation report was introduced after judgement and hence would be prejudicial to the Plaintiff. The prayers sought were injunctive in nature and the value of the property was never in contention. I find no error in principle and the fees awarded are not manifestly low. 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.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF SEPTEMBER 2023.



N.A. MATHEKA
JUDGE

