



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI.

JUDICIAL REVIEW NO. 11 OF 2016.

REPUBLIC.....APPLICANT

VERSUS

OFFICE OF THE REGISTRAR ACADEMIC AFFAIRS DEDAN

KIMATHI UNIVERSITY OF TECHNOLOGY.....RESPONDENT

AGUTU WYCLIFFE NELLY.....EX-PARTE APPLICANT

RULING

Before me is the Chamber Summons dated 28th August 2017 brought under Rule 11(2) of the Advocates Remuneration Order (ARO) supported by the affidavit of Charles Gikonyo Advocate sworn on the same date seeking the following orders:

- 1) That the Taxing Master's order dated 30th June 2017 on taxing of costs dated 16th December 2017 be set aside and the bill be taxed afresh.
- 2) That the costs of this application be provided for.

The said grounds for the application were;

- i. That the bill of costs dated 30th June 2017 was not taxed in accordance with the Advocate Remuneration Order 2014 (herein known as ARO) Schedule 6, especially paragraph 1(j) and other applicable paragraphs.
- ii. That respondent/applicant has already filed an objection to the illegal taxation.

The respondent's/applicant's first objection was in respect to item 1 on instruction fees to oppose an application praying for an order of certiorari and mandamus. The Taxing Master taxed it at Ksh.100,000/=. This, the respondent claimed to be grossly low.

The 2nd objection was on item 2 on getting up or preparing for trial, item 20-25 on attendances for hearing before the Honorable Judge, item 26 on photocopying fees, item 27 in respect to attestation fees, item 32 on drawing the bill of costs and item 33 with respect to making copies of the bill of costs. The bill of costs was taxed on the 30th June 2017 at Ksh.168, 133/-. The respondent/applicant was of the view that that was grossly low as it failed to take into account the nature and importance of the matter.

The respondent filed his grounds for opposition to the above said application on 27th February 2018. His grounds were:

- 1) The Taxing Master did not commit any error of principle in the taxing of the party and party respondent's bill of costs dated 16th December 2016 as to warrant the setting aside of the decision. The taxing officer abided by the provisions of the Advocates' Act and the Advocates Remuneration Order.
- 2) That the said application is frivolous, vexatious and an abuse of the process of the Honorable Court.

Parties filed written submissions and relied on several authorities which I have considered.

The issue before this Honorable Court is to determine whether the Taxing Master exercised her discretion reasonably, fairly and judiciously in taxing items 1 and 2 of the bill of costs and the other cited items of the bill.

The respondent relied on **Republic v Kenya Revenue Authority ex parte Middle East Bank Kenya Ltd [2012] eKLR** where the learned judge found that that the documents filed for hearing were not voluminous or numerous thus an increase in instruction fees was not warranted.

The applicant relied on the case of **Green Hills Investments v China National Complete Plant Export Corporation (COMPLANT) T/A COVEC (2004) eKLR** where Justice M.K. Ibrahim stated that the taxing master is given the discretion to award what is reasonable. However, such discretion itself ought to be exercised reasonably and judiciously. He cited **S.R. D'Souza & others v CC Ferrao and others (1960) E.A 602** which set out the general principles with regard to references in taxation the effect that the decision on quantum of taxation is generally final to be interfered with only when the taxing master is shown to have gone wholly wrong.

Issues for determination.

Item 1 and 2.

The applicant pleaded that the matter in JR 11/16 was not an ordinary matter because the area of law applied in the case was new in our country thus warranting a lot of research. The issues related to the Fair Administrative Action Act 2016 and Article 47 of the Constitution of Kenya on the right to fair administrative action. The applicant's argument was that it was a new legislation thus the instruction fees should have been taxed at Ksh.300,000/= and a third for getting up fees at Ksh.100,000/=.

The applicable area of law was the ARO specifically Schedule 6 especially paragraph 1(j):

paragraph j(ii) provides *where the matter is opposed and found to satisfy the criteria set out above, such sum as may reasonable but not less than Ksh.100,000/-.*

The criteria referred to is set out at (j) as follows:

(j) Constitutional petitions and prerogative orders

To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate—

The applicant asked for Ksh.300,000/- but was granted Ksh.100,000/- the minimum. It was upon the applicant to establish the complexity of the matter, the difficulty of novelty of the question raise and the amount or value of the subject matter.

It is important to point out that the amount is not specific and that in asserting the Taxing Master must apply the principles of taxation set out in **Premhand Raichand Ltd and anor v Quarry Services of East Africa [1972] EA 162** as follows:

- That costs not be allowed to rise to such a level as to confine access to the courts to the wealthy.
- That a successful litigant ought to be fairly reimbursed for the costs that he has had to incur.
- That the general level of remuneration of advocates must be such to attract recruits to the profession and;
- That so far as practicable there should be consistency in the awards made.
- The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.
- In considering bills taxed in comparable cases allowance may be made for the fall of value of money.
- The courts must also consider the time the case took, volume of the documents filed, workload of the research done and complexity of the subject matter.

I have perused the court file. Parties filed written submissions. There was no highlighting of the same, and the Judge appears to have written the ruling from the written submissions. It appears to me that the amount of work that went into the JR was the minimum in the circumstances. It appears to me that the matter of law considered in JR 11/16 was a straightforward matter, despite its novelty. In addition, this court did not see any voluminous or numerous documents filed by the applicant.

The applicant relied on Republic versus Kenya Revenue Authority ex parte Middle East Bank Kenya Limited [2012] eKLR arguing that in a similar matter Justice Githua taxed instruction fees at Ksh.1,000,000/- where the ARO provides for minimum of Ksh.28,000/-. I have perused the ruling and it clear that the Judge upheld the decision of the taxing master having not fund any reason to disturb the same in principle. Similarly in this case, I find that the taxing master did not commit any error to warrant my disturbing her decision.

Item 20-25 on attendances,

The applicable part of the ARO was Schedule 6 paragraph 7(d) provides the following:

Time	Ordinary scale(Ksh)	Higher scale(Ksh)
Half-hour or less.	1,100	1,900
One hour.	2,300	3,000
Half-day	5,000	7,100
Whole day	10,000	15,000

In this instance, the record speaks for itself the proceedings were not lengthy, they did not all warrant to be scaled against one hour proceedings. The taxing master taxed each at Ksh.1100/- each rather than the respondent's proposed sum of Ksh.3,000/-. I have perused the record and considered generally what happens at mentions before the Judge.

On 26th July 2016 counsel appeared and agreed as to manner in which the application would be dealt with. They could have taken longer than 15 minutes, the amount is reviewable to Ksh.1900/-, similarly on 30th August 2016 they took directions and I review the amount to Ksh 1900/-.

On 5th October matter was mentioned. Counsel had been served late with submissions. He sought adjournment for one week, the amount is Ksh 1900. On 31st October 2016 it was mention to confirm filing of submissions. Mr. Wahome had not filed his. He sought the adjournment. No costs for that day. On 7th November it was to merely confirm filing of submissions Ksh.1100/- is sufficient for that day. On 24th November 2016 the Ruling was delivered. Considering Counsel could have been in court for an hour I review the award to Ksh.3000/-. Total for attendances **Ksh.9800/-**.

Item 26.

The item was in respect to photocopying fees. It was dismissed by the taxing master for the reason that it was unsupported by any evidence. None has been provided.

Item 27.

This was in respect to attestation fees. This item was dismissed by the taxing master for the reason that it was not provided for in the ARO. Item 32 and 33;

These turn on the meaning of the term folio defined at rule 17 f the ARO as:

A folio shall for all purposes of this Order be deemed to consist of 100 words and any part of a folio shall be charged as one folio. A sum or quantity of one denomination stated in figures is to be counted as one word: eg. "£25,564 16s 8d." is to be counted as three words, and "254 feet 11 inches" is to be counted as four words. On drawing the bill of costs, the applicant claimed Ksh.1,440/-, arguing that the taxing master was treating the Bill of Costs as having 400 words instead of being more than 800 words. It was incumbent upon the applicant to demonstrate that indeed it was more than 800 words. No effort was made to do so even in this reference and I doubt that counsel expects the court to actually do a word count at this stage. It was the applicant's duty to establish the number of folios. That cannot be by argument but by evidence.

Item 33.

This item was dependant on the establishment of item 32.

Conclusion.

The finding of the taxing master is reviewed accordingly.

Dated, delivered and signed at Nyeri this 31st day of January 2019.

Mumbua T Matheka

Judge

In the presence of:

Ms. Jerusha-Court Assistant

Ms.Wangeci holding brief for Wahome Gikonyo for Respondent.

No appearance for applicant

Mumbua T Matheka

Judge

31/1/19