



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**MISC. APPLICATION NO.17 OF 2017**

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

**-VERSUS-**

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

**RULING**

This reference was filed by the applicant on 23<sup>rd</sup> February 2018 against the Respondent seeking the review and setting aside the taxing master's ruling of 19<sup>th</sup> December 2017 on the advocate/client bill of costs dated 30<sup>th</sup> March 2017. The reference is supported by an affidavit of Charles Muchemi Karweru, Advocate, dated 23<sup>rd</sup> February 2018 stating the following: -

- a. The applicant represented the Respondent in a matter before court.
- b. A disagreement on fees arose necessitating the Applicant to file a bill of costs.
- c. The taxing master directed parties to file submissions on the bill of costs.
- d. The taxing master returned a ruling in which she did not tax the bill as mandated by law and interpreted the law erroneously by treating the bill of costs as a party/party bill of costs instead of advocate/client bill of costs.
- e. The taxing master's reasoning is so flawed that it should be set aside.
- f. The Respondent did not raise any factual objection to the itemized bill of costs and the taxing master was legally bound to look at the figures and determine their appropriateness.

The Respondent filed a Replying Affidavit dated 2<sup>nd</sup> may 2018 in response to the application and deponed that:-

- a. The Applicant's bill of costs was challenged vide a preliminary objection on various items which were exaggerated and not provided for in law.
- b. The bill of costs was taxed item by item.
- c. The allegation that the bill of costs was not taxed is untrue because the material Ruling clearly shows the approach the taxing master took on each item in the said bill.
- d. The taxing master properly discharged her obligations as required by law.
- e. The reference should be dismissed.

Parties filed written submissions. The Applicant submitted that the Respondent had a wrong conception of the law governing advocate/client bill of costs. He stated that advocate/client bill of costs is not only derived from party/party bill of costs as taxed by the court. He stated that there are items not in the party/party bill of costs that the advocate can add in its advocate/client bill. Each item in the advocate's bill must be scrutinized separately. The bill should have been taxed as drawn as the Respondent did not object to the items set out by the Advocate.

The Respondent submitted that the taxing master was keen to tax each individual item on the bill of costs. There was no error to warrant the

setting aside of the taxing master's decision. That the applicant was not seeking a specific prayer but a general plea for the ruling to be set aside.

The issue for determination is whether the taxing master applied wrong principles in assessing the Advocate's bill of costs.

It is noteworthy that the Applicant did not challenge the taxation of specific items by the taxing master. I have scrutinized the bill of costs as set out and the Ruling dated 19<sup>th</sup> December 2017.

I find guidance in the case of **Kipkorir Tito & Kiara Advocates vs. Deposit Protection Fund (2005) eKLR** where the Court of Appeal held:-

**“Where there has been an error in principle, the Court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal with and the Court will interfere only in exceptional circumstances”**

Most recently, the Court in **Kanu National Elections Board & 2 Others vs. Salah Yakub Farah (2018)eKLR** held:-

**“Before the court interferes with the decision of the taxing master it must be satisfied that the taxing master's ruling was clearly wrong, as opposed to the court being clearly satisfied that the taxing master was wrong. This indicates that the court will not interfere with the decision of the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differs so materially from its own that it should be held to vitiate the ruling.”**

In her Ruling, the taxing master noted that the Applicant represented the Respondent in Nyeri CMCC No. 331 of 2009 on instructions given on 20<sup>th</sup> May 2009. The taxing master therefore determined that the applicable law would be the Advocates Remuneration Order 2006 and 2014. She went ahead to identify the specific provisions being Schedule 7 and 6.

Since this was an advocate/client bill of costs the applicable provision is Schedule 7-part B which states that the minimum fees between advocate and client is: -

- a. The fees prescribed in “A” above increased by 50% or
- b. The fees ordered by the Court increased by 50% or
- c. The fees agreed by the parties under paragraph 57 of this Order increased by 50% as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.

The import of the above schedule is as held in **Kinyua Muyaa & Co. Advocates vs Kenya Ports Authority Oesin Scheme & Others (2017) eKLR** that the instruction fees of an Advocate is depended on the choice of the advocate while drawing his bill either based on the value of the suit (the prescribed fees under part A of schedule (vi) of ARO), or party and party costs taxed (costs ordered by the court), or the agreement between the parties under paragraph 57 of the ARO. In either of the 3 options, the amount is increased by 50%. It follows therefore that if an advocate draws his bill based on the value of the suit under Part A of the VI Schedule, he is not bound by the proceedings under party and party bill of costs. The Taxing Officer must consider all the items charged under the Advocate-Client bill and determine it on merits including all proper attendances on the client and all necessary correspondences.

The taxing officer properly began by taxing the instructions fees in accordance with the applicable schedule 7A of the ARO 2006. She proceeded to tax other items and taxed off others for not being provided for under the ARO. It is clear that the taxing master erred in principle by treating the bill as a party/party bill of costs. This is evident in the taxing master's failure to increase the total figure by half and taxing the VAT as required.

Consequently, the application partly succeeds and the bill of costs dated 30<sup>th</sup> March 2017 is referred back the taxing master to correct the said errors.

**Dated, delivered and signed at Nyeri this 25<sup>th</sup> January 2019.**

**Mumbua T Matheka**

**Judge**

In the presence of: