



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**MISC. APPLICATION NO.16 OF 2017**

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

**VERSUS**

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

**RULING**

This reference was presented by the applicant on 23<sup>rd</sup> February 2018 against the Respondent seeking the review and setting aside of the taxing officer's ruling of 19<sup>th</sup> December 2017 on the advocate/client bill of costs dated 30<sup>th</sup> March 2017 vide Nyeri High Court Misc. App. No.19 of 2017. The reference is supported by an affidavit of Charles Muchemi Karweru, Advocate, dated 23<sup>rd</sup> February 2018 where he depones that;

- 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.

In his replying affidavit dated 2<sup>nd</sup> May 2018 in opposing the application the respondent depones that:

- a) The Applicant's bill of costs was challenged with a preliminary objection on grounds that the Advocate was not instructed to file any suit on behalf of the Respondent and no suit was filed.
- a) The bill of costs was misplaced and the taxing master was correct in dismissing it as it was not hinged on any suit.
- b) The reference should be dismissed.

Parties filed written submissions which I have considered.

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 approved as drawn as the Respondent did not object to the items set out by the Advocate.

The Respondent submitted that there were no instructions given to the Advocate and hence no suit was filed on behalf of the Respondent.

The issue for determination is whether the taxing master applied wrong principles in assessing the Advocate's bill of costs. The taxing master applied the right principles by dismissing the entire bill for being baseless and anchored on nothing.

The issue for determination is whether the applicant proved the existence of instructions to warrant taxation.

Was the Applicant was instructed by the Respondent? That was the basis for the dismissal of the bill of costs by taxing master dismissed the bill of who found that the Applicant had failed to establish that he had been instructed by the respondent.

Looking at the subject bill of costs there is no semblance of advocate-client relationship to warrant taxation of the said bill. Instructions do not have to be written. The advocate can prove that they have been given instruction by providing correspondence or the case number which the Applicant failed to do before the taxing master. The Court of Appeal in **Wilfred N. Konosi t/a Konosi & Co. Advocates vs Flamco Ltd (2017) eKLR** held that proof of existence of advocate-client relationship is prerequisite for an advocates claim for costs from a client. The Court held as follows: -

*“In this appeal, the only shred of evidence on the basis of which the appellant claims that the respondent was his client is cheque No. 000118 dated 26<sup>th</sup> June 2010 drawn on Diamond Trust Bank Limited by the respondent, Flamco Limited, in favour of Wilfred Nyaundi Konosi for Ksh110,000/-...Not a single letter by the appellant to the respondent was exhibited to demonstrate that the relationship of advocate-client obtained. The onus reposed on the appellant. It was not discharged. In the absence of proof that there existed advocate-client relationship, the Taxing Officer was justified in striking out the Bill of Costs as she did and the learned Judge of the High Court was right to uphold the decision of the Taxing Officer. We find no merit in any of the grounds of appeal. We dismiss the appeal with costs to the respondent.”*

I need not say more. The application has no merit and I find no reason to disturb the decision of the taxing master.

The application is dismissed with costs to the respondent.

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

**Mumbua T Matheka**

**Judge**

In the presence of:

Ms.Mwikali for Karweru the applicant

Jerusha-Court Assistant

**Mumbua T Matheka**

**Judge**

25/1/19