



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC.APP.NO. 20 OF 2017

CHARLES M.KARUWERU t/a KARUWERU & CO. ADVOCATES...APPLICANT

VERSUS

MAISHA FLOUR MILLS LTD.....RESPONDENT

RULING

1. The Application is dated the 23rd February, 2018 and is premised under the provisions of Rule 11 of the Advocates Remuneration Rules; the Applicant seeks the following orders;

(i) Spent.

(ii) That by way of reference to the Honourable Judge, this honourable court be pleased to review and set aside the taxing officers ruling of 19/12/2017 on the advocate-client bill of costs dated 30/03/2017 vide Nyeri High Court Misc.App.No.20 of 2017.

(iii) The costs of the Application be provided for.

APPLICANTS CLAIM

2. The Applicant relies on the grounds on the face of the application and on the Supporting Affidavit made on the same date by **CHARLES MUCHEMI KARUWERU ADVOCATE** who deponed that a disagreement arose with his client that necessitated the filing of the Bill of Costs; that he was not satisfied with the decision of the taxing master as the ruling was flawed and erroneous; that the taxing master interpreted the law erroneously and had taxed the Bill as a party and party bill of costs as opposed to an advocate-client bill;

3. That the respondent had not raised any factual objection to any of the itemized billings and therefore the taxing master was only legally bound to look at the figures and determine the appropriateness;

4. The applicant's contention was that the taxing master was wrong in upsetting the instruction fee of Kshs142,999/-; and failed to enhance this amount by ½; erred in reducing the service fee to Karatina; and was also wrong in dismissing the claim for filing fees in the sum of Kshs.71,000/-; and ought to have added VAT;

5. The applicant prayed the ruling of the Deputy Registrar be set aside;

RESPONDENTS RESPONSE

6. The application was opposed and the respondent filed a Replying Affidavit and also filed its written submissions; the respondent pointed out that there was no ruling delivered by the taxing master on the 18/01/2018; that the one that was delivered was dated the 19/01/2018; that there was no cure to this anomaly and that the application should therefore be dismissed;

7. That despite the Preliminary Objection to the Bill of Costs the taxing master correctly visited the Bill of costs and taxed each item carefully the Deputy Registrar properly taxed the Bill and confined herself to the law, applied the right principles and gave satisfactory reasons on all items; that the ruling was very detailed, comprehensive and reasonable; and therefore the allegations that the Bill was not properly taxed was misleading;

8. Counsel submitted that the reference had no merit as no good grounds had been adduced to warrant interference with the taxing masters ruling;

ISSUES FOR DETERMINATION

9. Upon perusal of the record and after reading the respective written submissions this court finds only one issue for determination which is whether the taxing master applied wrong principles of law to warrant interference with the decision;

ANALYSIS

10. The parties were directed to file and exchange written submissions; and the application was canvassed by way of written submissions; it is trite law that this court cannot interfere with the taxing masters discretion on taxation unless it is satisfied that the taxing masters ruling was clearly wrong or that he/sha acted on a wrong principle(s); and these principles are outlined in the case **Kanu National Elections Board & 2 others vs Salah Yakub Farah [2018] eKLR** where the court held that the taxing masters discretion will not be interfered with;

“...unless it is found that he/she has not exercised his/her discretion properly as for example when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.”

11. The applicant avers that having disagreed with his client on the fees he proceeded to file advocate/client Bill of Costs and that the taxing master proceeded to interpret it as a party and party bill of costs;

12. Indeed, the taxing masters ruling at paragraph (5) confirms that the bill was taxed under Schedule 7 (iii) of the ARO; the court record reflects that the Bill is titled ‘**ADVOCATE/CLIENT BILL OF COSTS**’ and the respondent does not dispute this fact; if the taxing master had any doubts she ought to have sought clarification from the parties; by taxing the bill as a Party and Party Bill the taxing master was clearly wrong;

13. The relevant provision of the law that governs taxation between an advocate and his/her client is found under Schedule VI part B of the Advocates Remuneration Order (ARO) and the minimum prescribed fees provided therein is either;

- (a) The fees prescribed in part A increased by one-half; or
- (b) The fees ordered by the court increased by one-half; or
- (c) The fees agreed by the parties increased by one-half;

14. Upon perusal of the court record it is noted that the respondent admitted vide its response dated the 9/10/2017 that the parties had agreed on the fee of Kshs.142,999/-; if the taxing master had any doubts this court reiterates that she ought to have invited the parties to verify whether the fees as stated was as agreed upon or otherwise;

15. From the material placed before this court the applicable provision is found to be Schedule VI(c) of the ARO; the applicant would therefore be entitled to the agreed fee of KShs.142,999/- increased by 50% which amounts to Kshs.71,4999/50 making a total sum of Kshs.214,498/-; and to this amount VAT at 16% must be added as it is also recoverable;

16. The next item that needs to be addressed is the court filing fees of Kshs.70,675/- that was disallowed; the taxing master in her ruling at paragraph (11)states as follows

“Item 87 is dismissed as each item on court fees should be individually submitted with the exact dates on which the item was filed and spent”

17. Indeed, the advocate is entitled to recover the court filing fees as a disbursement (item 87) upon proof; it is this courts considered view that it is good practice for a taxing master to make enquires and verify from the advocate that such monies have actually been paid or disbursed before allowing or disallowing recovery of such payment; the ruling makes no mention of any such enquiry for proof of this item; and these reimbursements on disbursements are not subject to VAT;

18. For those reasons this court is satisfied that the taxing master was clearly erroneous in fact and in law in that she failed to tax the bill under the provisions of Part B of Schedule VI (c) as required in law; and this court finds that this a suitable case for it to interfere with the taxing masters ruling dated the 19/12/2017.

FINDINGS AND DETERMINATION

19. In the light of the foregoing this court makes the following findings and determinations;

- (a) This court finds that the applicants reference has merit and it is hereby allowed;
- (b) The taxation and the consequential ruling dated 19/12/2017 is hereby set aside;
- (c) The Bill of Costs is hereby remitted back for taxation before a different taxing master.

(d) Each party shall bear its own costs of the application.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 10th day of April, 2019.

HON. A. MSHILA

JUDGE