



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**MISC APPLICATION NO 252 OF 2011**

**IN THE MATTER OF THE ADVOCATES/CLIENT BILL OF COST**

**JUDY THONGORI & CO ADVOCATES.....ADVOCATE/RESPONDENT**

**VERSUS**

**SIFA INTERNATIONAL LIMITED.....CLIENT/APPLICANT**

**(Being a Reference from the Ruling on Taxation of Advocate's Bill of Costs**

**by the Honourable L. Mbacho (DR) dated and delivered on 16<sup>th</sup> November, 2018)**

**RULING**

**INTRODUCTION**

1. The Advocate's Notice of Motion application dated and filed on 30<sup>th</sup> November, 2018 was filed pursuant to the provisions of Paragraph 11(2) of the Advocates Remuneration Order, Section 5(2) of the Advocates Remuneration Order, Section 51(2) of the Act (**sic**) and all other enabling provisions of the law. It sought for prayers that the decision of the Taxing Master delivered on 16<sup>th</sup> November 2018 be set aside and that the Applicant's Bill of costs dated 6<sup>th</sup> June 2011 be reviewed by the court or reviewed by another Taxing Master. The said application was supported by the Affidavit of Stephen Gitonga Mureithi that was sworn on 30<sup>th</sup> November 2018.

2. The Client's Chamber Summons application dated and filed on 7<sup>th</sup> December 2018 was also filed pursuant to the provisions of Rule 11(2) of the Advocates Remuneration Order, Section 3A of the Civil Procedure Act and all other enabling provisions of the law. It sought for orders that the Ruling and/or decision that was delivered by Hon L. Mbacho (DR) the Taxing Master, where she taxed the Advocates/Client Bill of Costs dated 6<sup>th</sup> June 2011 at the sum of Kshs 2,815,557/-, be set aside and/or vacated and that the Bill of Costs be remitted back for taxation by a different taxing master. It was supported by the Affidavit of Service of Martin Munene Micheni that was also sworn on 7<sup>th</sup> December, 2018.

3. When the matter came up in court on 16<sup>th</sup> January 2019, parties agreed that both applications should be heard together.

4. The Advocates' Written Submissions were dated and filed on 4<sup>th</sup> March 2019 while those of the Client were dated 18<sup>th</sup> February 2019 and filed on 19<sup>th</sup> February 2019.

5. Parties asked this court to render its decision based on the respective Written Submissions that they had relied upon in their entirety. The Ruling herein is therefore based on the said Written Submissions.

**I. THE ADVOCATE'S NOTICE OF MOTION APPLICATION DATED AND FILED ON 30<sup>TH</sup> NOVEMBER 2018**

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6. The Advocate contended that the Client instructed it to represent it in **Milimani Civil Case No 709 of 2004** which was consolidated with **ELC No 111 of 2008**.

7. It averred that the Taxing Master used a wrong value of the suit property in assessing the instruction fees and awarding instruction fees

that were manifestly low compared to the real value of the suit property in question.

8. It was its contention that the Taxing Master erred when she determined that instruction fees could only be charged once, despite the fact that it was instructed severally (**sic**) and prepared several applications in the matter. It also pointed out that two (2) items namely Item Nos 84 and 103 were held by the Taxing Master not to have been provided under the Schedule in 1997 and the 2006 Remuneration Order.

9. It also asserted that the Taxing Master erred when she held that the getting up fees ought to be 1/3 of the instruction fees that had erroneously been computed.

10. It faulted the Taxing Master for not appreciating the nature of the business it conducted on behalf of the Respondent and complexity of the matter.

11. In opposition to the said application, the Client's Director, Lennah Wanjiku Koinange, swore her Replying Affidavit on 12<sup>th</sup> February 2019. It was filed on the same date. She pointed out that she agreed that the Taxing Master's decision that was delivered on 16<sup>th</sup> November 2018 be set aside and/or vacated.

12. It was the Client's contention that the subject matter related to a lease where the rent that was in dispute was Kshs 250,000/- per month, a fact that was discernible from the pleadings and judgment. It pointed out that there was no justification in the Taxing Master increasing the instruction fees to Kshs 500,000/- and that the valuation of Kshs 700,000/- that had been given was not applicable in the circumstances of the case as it was not the ownership of the property that was in dispute but rather it was a tenancy dispute.

13. It was emphatic that instructions fees were only chargeable once and that the matter was not complex as had been contended by the Advocate. It stated that the calculation of the getting up fees at 1/3 of the instruction fees was properly calculated and that the Taxing Master was right when she rejected items No 84 and 103 as they were not provided under the 1997 and 2006 Remuneration Order.

## **II. THE CLIENT'S CHAMBER SUMMONS APPLICATION DATED AND FILED ON 7<sup>TH</sup> DECEMBER 2018**

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14. The Client's main contention was that the instruction fee for the suit and counter claim assessed at Ksh 500,000/- each was manifestly excessive and out of proportion of the work that the Advocate had done on its behalf so that it did not represent a fair and reasonable compensation for the tasks it performed on its behalf.

15. In response thereto, Judy Thongori, swore a Replying Affidavit on 30<sup>th</sup> January 2019. It was filed on 1<sup>st</sup> February 2019. She also agreed with the Client that the decision for the Taxing Master ought to be set aside and/or vacated. It was her contention, however, that the instruction fees of Kshs 500,000/- each was not only manifestly low but that it also lacked any legal basis vis-à-vis the work done and the actual value of the suit property the Advocate was asked to defend on behalf of the Respondent herein.

### **LEGAL ANALYSIS**

16. The Advocate relied on several cases amongst them the case of **Joreth Limited vs Kigano & Associated (2002) EA, Muriu Mungai & Co Advocates vs New Kenya Co-operative Creameries Ltd (2008) eKLR** to support its case. None of the cases it relied upon were annexed to its Written Submissions. It has annexed totally different cases that were not highlighted in its Written Submissions.

17. On its part, the Client also relied on the case of **Joreth Ltd vs Kigano Associates** (Supra) but the same was also not attached to its Written Submissions. It had only attached a copy of the case of **Republic vs Minister for Agriculture & 2 others E parte Samuel Muchiri W. Njuguna & 6 others (2006) eKLR** to buttress its argument.

18. It was evident that both the Advocate and the Client were dissatisfied with the decision of the Taxing Master that was delivered on 16<sup>th</sup> November 2018. While they opposed each others' applications in principle, they were agreed that the said decision ought to be set aside and/or vacated. Where there was a divergence was whether the instruction fees was manifestly low or whether the same were manifestly excessive so as not to have represented a fair and reasonable compensation for the work the Advocate did on behalf of the Respondent.

19. The parties were also not in agreement regarding the assessment of the getting up fees and item Nos 84 and 103 in the Advocates/Client Bill of Costs dated 6<sup>th</sup> June 2011.

20. These were all issues that could have been heard by the judge hearing the references if he or she was to elect to tax the said Bill of Costs. However, in instances where parties seek that a bill of costs be determined by another taxing master other than the one who had taxed the same, it is best that a judge leaves the re-taxation to such new taxing master. The advantage of this option is that it gives an aggrieved party two(2) chances to appeal, one in the High Court and another in the Court of Appeal where the High Court gives leave for the aggrieved party to appeal to the Court of Appeal as provided in Rule 11 (4) of the Advocates Remuneration Order.

21. While this court noted the parties' submissions and the case law they each relied upon, it did not analyse the same as there was a consensus on setting aside and/or vacating the decision of the Taxing Master by both of them.

22. Bearing in mind the fact the parties were on opposite ends of their arguments on the issues that were in contention, it was best that a new taxing master other than Hon L. Mbacho (DR) who taxed the Advocate/Client Bill of Costs tax the Advocate/Client Bill of Costs dated 6<sup>th</sup> June 2011 afresh.

**DISPOSITION**

23. For the foregoing reasons, the upshot of this court's Ruling was that:-

**1. The Advocate's Notice of Motion application dated and filed on 30<sup>th</sup> November 2018 was merited and the same is hereby allowed in terms of Prayer Nos (1) and (2) herein.**

**2. The Client's Chamber Summons application dated and filed on 7<sup>th</sup> December 2018 was merited and the same is hereby allowed in terms of Prayer Nos (1) and (2) therein. Costs shall be in the cause.**

24. It is so ordered.

**DATED and DELIVERED at NAIROBI this 20<sup>th</sup> day of June 2019**

**J. KAMAU**

**JUDGE**