



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

MISC. APPLICATION NO 47 OF 2015

MURI MWANIKI & WAMITI ADVOCATES.....ADVOCATE/RESPONDENT

VERSUS

KENYA ORIENT INSURANCE VERSUS LTD.....CLIENT/APPLICANT

RULING

1. This is a reference to this Court from a decision made on 22nd February, 2017 by the Taxing Officer on the Respondent's bill of costs dated 22nd April, 2015.

2. By a Chamber Summons dated 16th November, 2017, brought under the provisions of Rule 11 of the Advocates (Remuneration) Order, the Applicant's is seeking the following orders: -

1. That the Honourable Court be pleased to review, set aside and/or vary the decision of the Taxing Master made on 20th February, 2017 in respect of items 24, 41, 59, 68, 69, 70, 73, 74, 75, 76, 77, 78, 79, 82, 86, 87, 88, 91, 99, 102 and 103.

2. The costs of this application be in the cause

3. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn by Peter M. Karanja on 16th November, 2017. Attached to the affidavit is the Respondent's bill of costs dated 22nd April, 2015; the applicant's submission filed before the Taxing Master, the Taxing Master's decision on Taxation, notice of objection on Taxation, letter requesting for reasons from the Taxing Master and the response thereof.

4. The application is opposed on the basis of grounds of a replying affidavit sworn by Martin G. Mwaniki on 5th December, 2017 in which it is stated that the Taxing Master's discretion was exercised properly.

5. I have carefully considered the reference in the light of the affidavits and written submissions filed on behalf of the Applicant. In determining, the reference, I shall deal with each item as presented in the reference.

i. Item 24 ought to have been taxed at Kshs. 1,125 /- as allowed by the Taxing Master in similar items

ii. Item 59, the Taxing Master rightfully found that only Mr. Olel, advocate for the plaintiff attended court on 19th May, 2014 and therefore the sum of Kshs. 15,000/- on this item ought not to have been allowed

iii. Item 68 ought to have been taxed at Kshs. 2,100/- as allowed by the Taxing Master in similar items

iv. Item 69 which the Taxing Master taxed at Ksh. 15,000/- is for a journey made on which was allowed in Misc. Application No. 48 and 49 of 2015 and ought not to have been allowed since it amounts to duplicity of items

v. Objection on Items, 47, 73, 74, 75, 76, 77, 78, 79, 82, 86, 87, 88, 91, 99, 102 and 103 was withdrawn

6. I am well aware of the discretion given to the Taxing Officer in taxation matters under Section 27 of the Civil Procedure Act, 2010, and

that this court should only interfere with that discretion if there is an error in principle, or if the sum arrived at was either so high or so low as to imply that the taxing officer applied the wrong principles.

7. I am satisfied that such is the case here but only in respect of items 24, 59, 68 and 69.

8. Accordingly, the applicant's Chamber Summons application dated 16th November, 2017 is allowed in the following terms:

1. A total of Kshs. 36, 350 /- is taxed off as follows: Kshs. 450/- on item 24; Kshs. 15,000/- each on items 59 and 69 and Kshs. 5,900/- on item 68

2. Costs shall be in the cause

DATED AND DELIVERED IN KISUMU ON THIS 25th DAY OF July, 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For Applicant/ Client - Mr Anyul/ Mr Kenya

For Respondent/Advocate – Mr Odino/Ms Kogen