



**REPUBLIC OF KENYA**

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

**MISC. CIVIL CAUSE NO 261 OF 2014**

**MENEZES & ODHIAMBO ASSOCIATES.....APPLICANT/ADVOCATES**

**VERSUS**

**KAUSHIK PANCHMATIA & 11 OTHERS.....RESPONDENTS**

**RULING**

1. This is a reference to this Court from a decision of the Taxing Officer on the Respondent's bill of costs dated 13th May, 2014. The main item of contention is the instructions fees which was taxed at Kshs.363,000/-. The Applicant's Chamber Summons application dated 12th May, 2017 and filed on 12th May, 2017 is brought under the provisions of Rule 11(2) of the Advocates (Remuneration) order. It seeks the following orders:-

**1. That the decision dated 12th April, 2017 by the Taxing Master and reasons contained in the Taxing Master's letter dated 3rd May, 2017 on item 1 of the applicant/advocates bill of costs dated 13th May, 2014 be set aside and substituted with an award suitable under the Advocates Remuneration Order, 2009( the Order).**

**2. The costs of this application be in the cause**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of Kaushik Panchmatia sworn on 12th May, 2017. Attached to the affidavit is the applicant/advocates bill of costs dated 13th May, 2014, letter dated 21st April 2017 to the Taxing Master requesting for reasons for the award on item No. 1 and the Taxing Master's response dated 3rd May, 2017 marked **KP 1, KP 2** and **KP 3** respectively.

3. The application is opposed on the basis of grounds of opposition dated 2nd June, 2017 and filed on 6th June, 2017 in which it is stated that the Taxing Master's discretion was exercised properly under Section 27 of the Civil Procedure Act, 2010 and that the issues raised in the reference were not argued before the Taxing Master.

**LEGAL SUBMISSIONS**

**Applicant's submissions**

4. The applicant submits that no specific sum was sued for and that the correct amount allowable under item 1 is Kshs. 25,200/- and that the sum of Kshs. 363,000/- taxed by the Taxing Master was not only excessive but contrary to the Order. It was further submitted that the Taxing Master did not judiciously exercise the discretion and jurisdiction to award costs under Section 27 of the Civil Procedure Act, 2010.

## **Respondent's submissions**

5. It was submitted for the respondent that the bill was taxed as drawn since no item on the bill was opposed. The respondent submitted that the Taxing Master had applied the principles of law governing taxation and cited the case of **Premchand Reichand vs. Quarry Services of EA Ltd & others EALR (1972) EA 162** where the Court of Appeal laid down the following principles:

***“(i) (a) That costs be not allowed to rise to such a level as to confine access to the courts to the wealthy;***

***(b) That a successful litigant ought to be fairly reimbursed for the costs that he has had to incur***

***(c) That the general level of remuneration of advocates must be such as to attract recruits to the profession and***

***(d) That so far as practicable there should be consistency in the awards made.***

**(ii) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party;**

**(iii) In considering bills taxed in comparable cases allowance may be made for the fall in value of money.**

**(iv) A part from a small allowance to the appellant for the responsibility of advising the undertaking of the appeal there is no difference between the fee to be allowed to an appellant as distinguished from a respondent.**

6. The respondent urged the court not to interfere with the award merely because it was deemed to be excessive and to this end relied on **First American Bank of Kenya v Shah & others (2002) 1 EA 64**. The respondent also submitted that the 1st applicant did not establish that he had authority of the other 11 persons to file this reference and that the reference should be dismissed with costs since it is frivolous.

7. I have carefully considered the reference in the light of the supporting affidavit, the grounds of opposition and submissions for both parties. The issue for determination is whether the sum taxed on instructions fees is excessive.

8. The item for instruction fees was charged at Kshs.363,000/- which the Taxing Officer allowed. The minimum provided for in the Advocates (Remuneration) Amendment Order, 2009 Schedule VII is Kshs.25,200/-. No reasons were given for allowing a much higher sum of Kshs.363,000/.

9. 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.

10. I am satisfied that such is the case here since no reasons were given for allowing a much higher sum. I see the need to interfere with the taxing officer's discretion since there is, in my considered view a serious error of principle which amounts to an injustice to the applicant.

11. I have considered that the item on instructions fees was not opposed but find no evidence to support the amount of Kshs. 363,000/- as the sum that was fairly incurred by the respondent.

12. The fact that the reference is supported by an affidavit of only one of the applicants is in my considered view not fatal to the reference.

**Decision**

Accordingly, this court makes the following orders:

- 1. I hereby set aside the award of Kshs.363,000/- on instructions fees**
- 2. The bill shall revert to the taxing master for taxation of item 1 only**
- 3. Costs shall be in the cause**

**DATED AND DELIVERED ON THIS 25<sup>th</sup> DAY OF *January* 2018**

**T.W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistant -

Applicants -

Respondent -