



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI**

**CIVIL CASE NO.330 OF 2016**

**GATHERU GATHEMIA & COMPANY ADVOCATES.....PLAINTIFF/APPL.**

**VERSUS**

**JOAN MUGURE.....DEFENDANT/RESP.**

**RULING**

This is a ruling on reference brought by way of chamber summons dated 29<sup>th</sup> May 2017. It seeks to set aside in its entirety Advocate/Client Bill of costs dated 5<sup>th</sup> May 2017. It challenges the Taxing Master's decision in respect of item 1 and 16 instruction fees on Respondents Advocate Client Bill of costs. It seeks to have it varied/set aside and taxed afresh by this court.

Grounds on the face of the application are that the amount awarded by the Taxing Master as instruction fees of Kshs. 50,000 was excessive and not commensurate to the scope of work done by the Advocate in this case drawing two letters to the Applicant's former university, Southern Illinois University Carbondale (SIUC) demanding for release of transcripts.

The application is supported by an Affidavit sworn by the Respondent on 5<sup>th</sup> May 2017. He averred that the Taxing Master awarded the Respondent Kshs. 102,115.96 plus disbursement and tax wherein the instruction fee awarded was Kshs. 50,000. He averred that he is aggrieved as the sum is not commensurate to the work done by the Advocate and that the Taxing Master failed to give reasons for awarding the amount; that the nature of instruction fee was straight forward follow up letters and that Kshs. 50,000 is grossly exaggerated; that she totally disregarded submissions presented by his Advocate.

That the Taxing Master erred in principle in taxing the bill and arrived at a wrong decision.

He sought reassessment of the bill.

In response the Advocate submitted that the Taxing Master properly exercised her discretion and took into account relevant factors which include nature and importance of the matter, interest of the party who finally received her academic papers after the Advocates action and general conduct of the work.

I have considered the application herein.

In respect of item no.1 the Taxing Master did not specify which Schedule of Advocates Remuneration Order she relied on.

I note that the instructions given by the Client was to demand transcripts from a university abroad. There is no indication that there was resistance by university to release the transcripts. Record show that the university sought authority given to the Advocate by the students payment of fee balance Advocate. What the Advocate did was correspond with the university; she talked of 2 letters having been written to the university by the Advocate. I have perused the file and noted communications between the Advocate herein and the university. Separate fee has been awarded in respect of handling the correspondences. There is no indication he was instructed to sue the university. It is evident that the matter was resolved after exchange of correspondences.

Though not clearly stated it appears the Taxing Master relied on Schedule VII (A) & (B) in arriving at the instruction fee.

My view is that the instructions given herein are not specifically provided under Advocates Remuneration Order and should therefore fall under Schedule V as the remuneration is not otherwise prescribed; the applicable provision is Schedule V part II (1). The Schedule provide that the amount charged in the circumstances should be fair and reasonable; regard should be placed on care and labour required, the number and length of papers perused, nature and importance of the matter, interest of the parties. From the foregoing I find that the Taxing Master relied on wrong principle and the fee awarded is manifestly excessive/not commensurate with work done.

I note from the ruling by Taxing Master that she awarded the Kshs. 50,000 asked by the Advocate. Reason given for the award is importance of the matter and interest of the parties. She never specified the Schedule she relied on or specifics of the factors that influence decision on the figure.

There was no litigation involved. Costs awarded should be reasonable. I find that the Taxing Master erred in principle by awarding excessive costs on instruction fee.

Having arrived at the above finding and taking into consideration work done by the Advocate herein, the fact that he was dealing with a university located abroad and further the importance of the documents being demand by the Advocate on behalf of his Client, I find an award of Kshs. 30,000 reasonable as instruction fee. I have considered the fact that works which include receiving and perusing correspondences, making copies, drawing demand letter and dispatching have been provided for.

From the foregoing I tax off 20,000 from instruction fee and item 16 in the bill of costs. In so far as increment by ½ of instruction fee is concerned, it is a legal requirement that Advocate/Client bill of costs be increased by 50%; I will not interfere with that.

The tax is hereby send back to Taxing Master to amend the tabulation and draw certificate of costs accordingly.

**Dated and Delivered at Nairobi this 14<sup>th</sup> day of March, 2018.**

.....

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF**

.....COURT ASSISTANT

.....COUNSEL FOR APPLICANT/CLIENT

.....COUNSEL FOR RESPONDENT/ADVOCATE