



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC. APPL. NO. 539 OF 2014**

**MACHARIA –MWANGI & NJERU ADVOCATES.....RESPONDENT**

**VERSUS**

**PEMA HOLDINGS LIMITED.....APPLICANT**

**RULING**

1. The application dated 22<sup>nd</sup> December, 2017 seeks orders that:

**“(a) The decision of the Taxing Officer (F. Rashid) taxing the bill in this matter in the sum of Kshs.894,636/= be reviewed and/or set aside.**

**(b) This Honourable Court be pleased to substitute its own decision therefore; or**

**(c) The matter be remitted back to the Taxing Officer for re-assessment.**

**(d) The costs of the application be provided for.”**

2. The application is premised on the grounds stated therein and the supporting affidavit of Lawrence Nginyo Kariuki, the Applicant Company’s Managing Director. The Applicant is dissatisfied with the Taxing Officer’s taxation of the Client/Advocate Bill of costs at Ksh.894,636/=. The Applicant is specifically aggrieved by the taxation of item 1 & 2 of the Bill of the costs at Ksh.600,000/= and Ksh.200,000/= for instruction fees and getting up fees respectively. It is contended that the suit having been settled at Ksh.4,000,000/=. the correct instruction fee chargeable is Ksh.122,000/= . That the value of the subject matter was recorded in the settlement recorded by the parties as Ksh.4,000,000/=.

3. According to the Applicant, the Taxing Officer failed to appreciate that the suit having been settled, no getting up fee was chargeable. It is further stated that the Taxing Officer failed to consider the averment in the replying affidavit filed in reply to the Bill of costs.

4. In opposition to the application, the Respondent filed the grounds of opposition dated 6<sup>th</sup> January, 2018 which state as follows:

**“1. That there is a pending application dated 18<sup>th</sup> December, 2017 by the Respondent which has not been heard and determined on merit by this Honourable Court.**

**2. That the present application seeks to steal a match against the Respondent’s in locking him out from the seat of justice.**

**3. That it is mete and proper that the present application be heard and determined after the application dated 18<sup>th</sup> December, 2017 is heard and determined on merit.**

**4. That the Respondent stands to suffer prejudice if the present application is heard without determining the application dated 18<sup>th</sup> December, 2017.**

**5. That the court did not err in determining that this suit had been set down for hearing.”**

5. I have considered the application, the reply to the same and the submissions made by the counsels for the respective parties herein.

6. On the issue of the application dated 18<sup>th</sup> December, 2017 having not been heard and determined, it is noteworthy that the same was filed 18<sup>th</sup> December, 2017. A perusal of the court record discloses that the said application has never been listed for hearing since the day it was filed. During the hearing of the instant application on 27<sup>th</sup> February, 2018 no attempts were made to have the application heard together with the one at hand. It seems that the Respondent is not keen in proceeding with the said application which seeks the extension of time within to file a reference in respect of the same taxation which is impugned herein.

7. I have perused the ruling and reasons for taxation given by the Taxing Officer. The same does not address the settlement of Ksh.4,000,000/= reached by the parties without the suit going to trial. This lends credence to the submissions by the Applicant's counsel on the amounts taxed as instruction fee, amount taxed as getting up fees and the failure to consider the unconverted averments in the replying affidavit filed in response to the Bill of costs.

8. Faced with a similar scenario, the court of Appeal stated as follows in the case of **Joreth Ltd v Kigano [2002] eKLR**:

**“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances.”**

9. For the aforesaid reasons, I allow the application, set aside the taxation and remit the Bill of costs to the Taxing Officer to be taxed afresh. Costs of this application to the Applicant.

**Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of May, 2018**

**B.THURANIRA JADEN**

**JUDGE**