



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 571 OF 2012**

**ROBERT CHESANG.....APPLICANT**

**VERSUS**

**EQUITY BANK LIMITED.....RESPONDENT**

**LUCY NDURURI.....RESPONDENT**

**RULING**

1. The application dated 6<sup>th</sup> September, 2017 seeks the following orders:

**“1. The decision by the deputy Registrar dated 17<sup>th</sup> August, 2017 in relation to taxation of the bill of costs be set aside and the Applicant’s Bills of costs dated 7<sup>th</sup> June, 2017 be taxed afresh on Item 1 to 384.**

**2. That this Honourable Court do determine what kind of costs are payable to an advocate who is a Litigant in Person and the Deputy Registrar be directed to assess the total costs as per the directions of this Honourable court or this court tax the bill of costs.**

**3. The costs of this application be provided for.”**

2. The application is premised on the grounds stated therein and is supported by the affidavit of the Applicant, Robert Chesang. It is stated that the Applicant is an advocate who represented himself in the Appeal herein which is the subject of the Party and Party Bill costs the subject of this reference. The Applicant’s complaint is that the Taxing Officer taxed the aforesaid bill at Ksh.33,555/= in total, with Ksh.3,555/= being disbursements and Ksh.30,000/= being expenses for travel and the telephone calls made. The Taxing Officer is also faulted for not giving reasons on how the figure of Ksh.30,000/= for travel and telephone expenses was arrived at. It is further contended that items 1-384 of the bill of costs were not taxed at all.

3. The Applicant further averred that he resides in Lukenya area of Machakos County and covered 35 Km every time he came to Milimani Law Courts for this case. That in total he covered 70 Km for the more than 100 times he travelled to court spending about Kshs. 2,300/= per trip.

4. The application is opposed. It is stated in the replying affidavit that the Applicant having acted in person was only entitled to out of pocket expenses that he incurred during the proceedings but not any professional fees. That no receipts were produced in support of the Applicant’s claim for the expenses incurred during the litigation, hence the **“global figure”** award of Ksh.30,000/=. That the Applicant’s claim in item no 1-384 of the Bill of Costs fall under the purview of professional fees under Schedule VI of the Advocates Remuneration Order and were not payable. That the Applicant’s claim was not substantiated and the Applicant was therefore entitled to Ksh.3,555/= disbursements only.

5. I have considered the application, the response to the same and the written submissions filed by the counsels for the respective parties herein.

6. The crux of the matter is what the Applicant, an advocate who represented himself in the suit, is entitled to as his costs. According to the Applicant, an advocate representing himself is entitled to the same costs as if he had engaged another advocate to represent him, save for the instruction fees as no person can instruct themselves. On the other hand, the gist of the Respondents’ submissions is that the Applicant is not entitled to fees prescribed in the Advocates Remuneration Order as payable to an advocate since he represented himself. In other words, it is

stated that the Applicant is entitled only the costs that any party appearing in person is entitled to and that therefore it does not matter whether the Applicant is an Advocate by profession.

7. What is a party appearing in person entitled to? In **Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR** it was held as follows:

**“the object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure. Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting the case.”**

8. In the case at hand, the Taxing Officer taxed item 1-16 on the disbursements as drawn then awarded Ksh.30,000/= to cater for expenses **“such as travelling to court and telephone calls.”** This shows that the taxing officer appreciated that the Applicant incurred other costs in addition to disbursements of Ksh.3,555/=. The Taxing Officer in her ruling however erred when she failed to give any reasons on how the said sum of Ksh. 30,000/= was arrived at as she did not tax the bill item by item. The factors considered in arriving at the sum of Ksh.30,000/= ought to have been reflected in the ruling.

9. This court’s view is that an advocate who is a *prose* litigant is entitled to the costs which any other litigant acting in person is entitled to. (See for example **Job Kipkemoi Kilach v Director of Public Prosecutions & 2 others [2016] eKLR, Mwangi Keng’ara & Company Advocates v Invesco Assurance Company Limited [2016] eKLR**).

10. Looking at the Bill of costs the subject of this reference, I can see other expenses in addition to travel and telephone expenses e.g photocopying and printing charges, commissioning of affidavits, process serving etc.

11. On the question of whether the Applicant produced receipts or documents in support of the expenses reflected in his bill of costs, this court’s view is that the Taxing Officer should have considered the issue and made a decision thereof. (See for example **A. M. Kimani & Co. Advocates v Trident Insurance Company Limited [2016] eKLR**).

12. Having pointed out hereinabove that the Applicant even as a *prose* litigant was entitled to other costs other than just the disbursements reflected as totaling Ksh.3,555/=: this court is inclined to interfere with the decision of the Taxing Officer. As stated in the **First American Bank v Shah & others [2002] 1 E.A. 64**

**“this Court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle ...Of course it would be an error of principle to take into account relevant factors or to omit to consider relevant factors”**

13. In the case at hand, the taxing officer omitted to consider all the items in the Bill of costs and omitted to give reasons on how the sum of Ksh.30,000/= was arrived at.

14. With the foregoing, I find merits in the application and allow the same with costs. The decision by the Taxing Officer dated 17<sup>th</sup> August, 2017 is set aside. The Applicant’s Bill of costs dated 7<sup>th</sup> June, 2017 to be taxed afresh before another Taxing Officer.

**Date, signed and delivered at Nairobi this 29<sup>th</sup> day of May, 2018**

**B. THURANIRA JADEN**

**JUDGE**