

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL SUIT NO. 92 OF 2012

KENYA POWER & LIGHTING COMPANY LTD.....APPLICANT/DEFENDANT

VERSUS

AFRICAN MERCHANT ASSURANCE

COMPANY LTD.....RESPONDENT/PLAINTIFF

RULING

[CHAMBER SUMMONS DATED 1ST SEPTEMBER, 2017]

1. Through the Chamber Summons application dated 1st September, 2017 brought under Regulation 11(1) and (2) of the Advocates Remuneration Order, the Applicant, Kenya Power & Lighting Company Limited objects to the Deputy Registrar's ruling dated 28th July, 2018 in respect of Africa Merchant Assurance Company Limited's bill of costs dated 19th January, 2017. The grounds of objection are:

“1. THAT the learned taxing master erred in taxing the instructions fees at kshs. 13,500,000.

2. THAT the Learned taxing master erred in not considering the submissions presented before her and/or treating the [bill] superficially thereby taxing the entire bill of costs at kshs. 13,971,700.”

2. The application is supported by an affidavit sworn by advocate Michael Oloo in which he avers that the objection is based on the grounds on the face of the application.

3. The Respondent, African Merchant Assurance Company Limited opposed the Application through a replying affidavit sworn on 3rd March, 2018 by advocate Charles Githitu Waithima. The Respondent's case as presented through the said affidavit is that the objection has no legal basis as the taxation is sound and unshakeable. It is the Respondent's case that the provisions of the Advocates (Remuneration) Order are not binding on the taxing master but are merely a guide. Further, that the taxed amount varies and depends on the circumstances of each case. According to the Respondent, the amount charged on each item was clearly explained and justified.

4. When the application came up for hearing on 16th April, 2018, the advocates for the parties told the court that they had agreed to rely on the submissions they had filed before the Deputy Registrar.

5. I have perused the submissions filed before the Deputy Registrar. I have also looked at Schedule Six of the Advocates (Remuneration) Order. Item 1 provides for instruction fees to be awarded in certain circumstances.

6. In her ruling delivered on 28th July, 2017 the Deputy Registrar indicated that the bill was drawn to scale. Judgement was entered for the Respondent against the Applicant in the sum of Kshs. 71,527,412. The Deputy Registrar did not explain why she authorized an instruction fee of Kshs. 13,500,000 for such a claim. The matter was not a complex one and the Advocates (Remuneration) Order is clear on what should be awarded as instruction fees.

7. I therefore find that the objection to the taxation has merit. The taxation dated 28th July, 2017 is set aside. This matter is remanded back to Malindi Chief Magistrate's Court for fresh taxation of the bill of costs dated 19th January, 2017 by any taxing master apart from Nyamu Wandia.

8. Owing to the fact that this is a 2012 matter, the advocates for the parties are directed to have the matter listed for taxation on priority basis. The costs of the objection proceedings are awarded to the Applicant.

Dated, signed and delivered at Malindi this 26th day of July, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT