



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS APPLICATION NO 68 OF 2016

MURI MWANIKI & WAMITI ADVOCATES.....ADVOCATES

VERSUS

JAMES KAMAU NJENDU

T/A GITHUTHO ASSOCIATES.....CLIENT

RULING (2)

INTRODUCTION

1. The Advocates' Chamber Summons application was dated 15th March 2018 and filed on 29th March 2018 was filed pursuant to the provisions of Paragraph 11 (2) of the Advocates Remuneration Order and all other enabling provisions of the law. It sought the following orders:-

- 1. THAT the Honourable Court be pleased to set aside the decision of the Deputy Registrar Hon. Sitati Taxing Officer's decision delivered on 18th August 2017 'Ruling' and the resultant certificate of taxation if any be set aside to the extent that it related to the reasoning and determination pertaining to No. 1 through to item No 78 in the Advocate/Client Bill of Costs dated 23rd February 2016 (hereinafter "Bill of Costs").**
- 2. THAT this Honourable court be pleased to re-assess the fees due on the opposed items of the Advocates in respect of the Bill of Costs and make a finding on the same.**
- 3. THAT in the alternative and without prejudice to the foregoing, this Honourable Court be pleased to remit the opposed items of the Bill of Costs to another Taxing Officer for review and reconsideration with direction on the Taxation.**
- 4. THAT the costs of this application be awarded to the Applicant/Advocate.**

2. The Advocates' Written Submissions were dated 27th July 2018 and filed on 30th July 2018. When the matter came before the court on 30th July 2018, the Advocates requested that the court deliver its decision based on their Written Submissions which they relied upon in their entirety. The Ruling herein is therefore based on the said Written Submissions.

LEGAL ANALYSIS

3. The Advocates were emphatic that the value of the subject matter could be discerned from the pleadings and consequently, they based their instruction fee on a figure that was disclosed at Kshs 2,000,000,000/=. They were categorical that the Taxing Master erred in law in failing to apply the applicable principles of taxation. Notably, their application was unopposed. This court did not therefore deem it necessary to delve into the merits of their Written Submissions.

4. Having considered the affidavit evidence, the Written Submissions and the case law that they relied upon, it was the view of this court that it would be in the interests of justice and more prudent for it not to re-assess the Advocates Bill of Costs dated 23rd February 2016 and filed on 26th February 2016. Indeed, it was clear from the Advocates' application that they were not averse to the said Bill of Costs being re-assessed by a new taxing master.

DISPOSITION

5. Accordingly, the upshot of this court's ruling was that the Advocates' Chamber Summons application dated 15th March 2018 and filed on 29th March 2018 was merited and the same is hereby allowed in terms of Prayers No 1 therein.
6. The effect of this Ruling is that the Taxing Master's decision in respect of the Advocates' Bill of Costs dated 23rd February 2016 and filed on 26th February 2016 delivered on 18th August 2017 is hereby set aside and/or vacated.
7. It is hereby ordered and directed that the Advocates' Bill of Costs dated 23rd February 2016 and filed on 26th February 2016 be and is hereby remitted for taxation before any Taxing Master in the High Court Milimani Law Courts Civil Division other than to the Taxing Master who taxed the aforesaid Advocates' Bill of Costs on 18th August 2017.
8. There will be no orders as to costs.
9. Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this **31st** day of **October** 2018

J. KAMAU

JUDGE