



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISCELLANOUS APPLICATION NO 68 OF 2016

MURI MWANIKI & WAMITI ADVOCATES.....ADVOCATES

VERSUS

JAMES KAMAU NJENDU T/A GITHUTHO ASSOCIATES.....CLIENT

RULING (1)

INTRODUCTION

1. The Client's Chamber Summons application dated 21st February 2018 and filed on 23rd February 2018 was filed pursuant to the provisions of Sections 3A of the Civil Procedure Act (Cap 21 Laws of Kenya), Rule 11 (2) of the Advocates (Remuneration) Order, 2009 and all other enabling provisions of the law. It sought the following orders:-

- 1. THAT this Honourable court be pleased to set aside the decision of the Taxing Master delivered on 18th August, 2018 in the Respondent's Bill of Costs dated 23rd February 2016, the quantum awarded and the reasoning thereon.**
- 2. THAT this Honourable court be pleased to re-tax the said Bill of Costs.**
- 3. THAT in the alternative to prayer (2) above, this Honourable court be pleased to remit the Bill of Costs dated 23rd February, 2016 for re-taxation before a different taxing master with appropriate directions therefore.**
- 4. THAT the costs of this application be provided for.**

2. His Written Submissions were dated 25th June 2018 and filed on 26th June 2018. When the matter came before the court on 30th July 2018, he requested that the court deliver its decision based on his Written Submissions which he relied upon in their entirety. The Ruling herein is therefore based on the said Written Submissions.

LEGAL ANALYSIS

3. The Client submitted that the instruction fees that was awarded by the Taxing Master on 18th August 2017 was manifestly excessive warranting this court to set the same aside.

4. He added that the subject matter was not pecuniary in nature hence it was erroneous for the Advocates to have pegged their instruction fee on an amount of Kshs 2,000,000,000/=. He was categorical that the Taxing Master erred in law in failing to apply the correct principles of taxation. Notably, his application was unopposed. This court did not therefore deem it necessary to delve into the merits of the parties respective Written Submissions.

5. Having considered the affidavit evidence, his Written Submissions and the case law that he 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 Advocate's Bill of Costs dated 23rd February 2016 and filed on 26th February 2016. Indeed, it was clear from the Client's application that he was not averse to the said Bill of Costs being re-assessed by a new taxing master.

DISPOSITION

6. Accordingly, the upshot of this court's ruling was that the Client's Chamber Summons application dated 21st February 2018 and filed on

23rd February 2018 was merited and the same is hereby allowed in terms of Prayers No 3 therein.

7. 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.

8. 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 Client's Bill of Costs on 18th August 2017.

9. There will be no orders as to costs.

10. Orders accordingly.

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

J. KAMAU

JUDGE