



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

MISC. APPLICATION NO. 300 OF 2017

MICHAEL GATETE THIONGO.....APPLICANT

VERSUS

BARCLAYS BANK OF KENYA..... RESPONDENT

ORIGINATING FROM HCCC NO. 626 OF 2008

MILIMANI COMMERCIAL & TAX DIVISION

MICHAEL GATETE THIONGO.....APPLICANT

VERSUS

BARCLAYS BANK OF KENYA..... RESPONDENT

RULING

INTRODUCTION

1. This miscellaneous matter has a long trail. It was filed by **Michael Gatete Thiongo**, the applicant, for the purpose of taxation of party/party bill of costs, even though the applicant failed to properly entitle it. The taxing master by her ruling of **13th April 2018** struck out the bill of costs and to appreciate why it was struck out I will reproduce the ruling as follows:

“Ruling

This ruling is in respect of a bill of costs dated 29/6/17. The bill seeks to tax cost at Ksh 942,776. I have perused the bill. In as much as it has been filed as a miscellaneous file, the parties to the bill clearly show that this is a party and party bill of cost which should have been filed in the HCC no. 626 of 2008. The bill is a party and party bill because the party taxing it is the plaintiff in HCC no. 626 of 2008 against the defendant in the same case. These are Michael Gatete Thiongo vs BBK. Having perused HCCC No. 626 of 2008 the decree dated 27/8/12 issued pursuant to the judgment dated 31/7/12 has its order no. 4 providing that each party has to bear its own costs and therefore the plaintiff therein cannot purport to tax a bill against the defendant. If this bill is an advocate client, the applicant need to clearly state that it is the advocate against his client who is the plaintiff herein. The bill herein is therefore struck out with leave to the advocate to file a proper bill for taxation against this client.

Claire Wanyama

Taxing Master/Deputy Registrar.”

BACKGROUND

2. The applicant instituted proceedings against **Barclays Bank of Kenya** (the respondent) before this court in HCC No. 626 of 2008. By this court’s judgment of **27th August 2018**, this court made various orders amongst which was an order that each party to bear their own costs. The applicant appealed to the Court of Appeal against that judgment.

3. The Court of Appeal under the file Civil Appeal no. 257 of 2012 delivered its judgment on **18th November 2016** and made an order amongst others that the respondent do pay the applicants half costs in HCCC 626 of 2008.

4. It is because of that order on costs that the applicant filed in this miscellaneous matter his party/party bill of costs. What ought to be appreciated is that the applicant did not file the court of appeal decision together with his bill of costs and therefore the taxing master had no way of knowing that the decision of the High Court, that each party bear their own cost, had been overturned by the Court of Appeal. The applicant failed to attach that Court of Appeal judgment. In the absence of that judgment, the Deputy Registrar, the taxing master, only had the High Court Judgment which ordered each party to pay their own costs to guide her. The taxing master cannot be faulted in her decision in view of the applicant's said failure.

NOTICE OF MOTION DATED 3RD MAY 2018

5. By the above stated application the applicant seeks that the taxing master's decision of striking out his bill of costs be reversed and set aside and that the bill of costs be taxed as drawn.

DETERMINATION

6. I have set out the background above of this matter. The applicant is the author of his own misfortune in having his bill of costs struck out. I say this because the applicant should indeed have filed his bill of costs not as a miscellaneous matter but in the file HCC 626 of 2008 where the amount to be taxed will be determined. I further say so because the bill of costs as drawn in this matter fails to state whether it is a party/party bill of costs or advocate /client bill of costs. In this regard, I am in total agreement with the taxing master's statement in her ruling. I finally say that the applicant was in error because he did not, until he filed the notice of motion before me, avail a copy of the court of appeal judgment which awarded him half cost in HCC 626 of 2008.

7. In my considered view, with all the above stated shortcomings, I do not find that there is any basis of reversing the decision of the taxing master, which decision struck out the applicant's bill of costs. As can be seen from the said ruling, reproduced above, the taxing master merely struck out the bill of costs. She did not dismiss it. She further gave leave to the applicant to file an appropriate bill of costs.

8. I will only add to the taxing master's ruling by stating that the applicant must file a proper bill of costs, one which has a title, and which bill of costs must be filed in HCC 626 of 2008. The applicant must in filing that bill of costs avail in that file the court of appeal decision in Civil Appeal No. 257 of 2012 which reversed the High Court's decision on costs.

9. With all the above failings I have highlighted, and which the taxing master also noted in her ruling, which are so rudimentary it is a surprise the advocate for the applicant would have failed to note the same.

10. In the end, I decline to set aside the decision of the taxing master of **13th April 2018**. There shall be no orders as to costs in regards to the notice of motion dated **3rd May 2018**. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of October, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Applicant

..... for the Respondent

MARY KASANGO

JUDGE