



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISC. APPL. CAUSE NO. 399 OF 2016

RASHID NGAIRA &

ASSOCIATES ADVOCATES.....APPLICANT/ADVOCATES

-VERSUS-

ARID CONTRACTORS &

GENERAL SUPPLIERS LIMITED.....RESPONDENT/CLIENT

RULING

1. There are two applications before me. One is a notice of motion dated **26th January 2017** filed by **Rashid Ngaira & Associates Advocate** (*the advocate*) and a chamber summons dated **22nd March 2017** by **Arid Contractors & General Suppliers Limited** (*the client*).

2. Although I had made an order that the two applications be heard together, I shall only consider the chamber summons filed by the client in this ruling, for the reasons that will become clear herein below.

BACKGROUND

3. The advocate filed his advocate/client bill of costs on **1st September 2016**. It was taxed before the taxing master and a ruling was delivered on **24th October 2016**. The client has filed the chamber summons which is a reference against the taxing master's ruling seeking to set aside that taxation in respect to item no. 1, the instruction fees.

4. The advocate from what I can gather from the affidavits, because there is no document in support, represented the client before the Public Procurement Administrative Review Board. The date of that representation is not shown by the documents before me.

5. The learned taxing master, had this to say in regard to item no. 1 of the bill of costs:

*“the applicant (the advocate) has charged a sum of **Ksh 900,000** as instruction fees. As per the schedule 11 instruction fees will be **ksh 100,000** + % of the additional **16,153,280** = **261,532.50**. However, considering the principles laid down in the case of **Joreth Limited vs Kigano & Associates**, I find that the sum of **Ksh 900,000** will suffice as instruction fees.”*

ANALYSIS

6. I have considered the affidavit evidence and the taxing master's ruling. In regard to the taxation, of the advocate/client bill of costs, and more particularly item no. 1, I confirm that the taxing master taxed the same on the appropriate schedule that is schedule 11 of the Advocates (Remuneration) Order.

7. What however I find was a misdirection on the part of the taxing master was that there is no clear indication of how she arrived at **Ksh 900,000**. Although the taxing master made reference to the case of **Joreth Limited vs Kigano & another [2002] E A 92**, she failed to state whether the various factors stated in that case were considered by her. In that case, the court stated that a taxing master should consider, in determining instruction fees, the importance of the matter, general conduct of the case, the nature of the case, time taken for its dispatch and the impact of the case on the parties. The taxing master also failed to state the amount involved and the interest of the parties.

8. In my view, because the advocate did not support, with documents, the claim on instruction fees and because the taxing master did not indicate how, if she was considering the value involved, she arrived at instruction fees of ksh 900,000, I will therefore order that the taxation

of item no. 1 be set aside and that that item be re-taxed by another taxing master.

9. In the end, I order that the ruling of the Advocate/Client bill of costs of **24th October 2016** be set aside in regards to item no. 1. I order that item no. 1 be re-taxed by another taxing master other than **Nancy Makau, Deputy Registrar**.

10. In view of my finding above, and the orders I have made thereof, I direct that the notice of motion dated **26th January 2017**, which sought judgment for the taxed amount, be fixed for hearing when item no. 1 of the bill of costs is re-taxed. 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