



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

MISC. APPLICATION NO. 572 OF 2016

KAMOTHO MAIYO & MBATIA ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

ORIENTAL COMMERCIAL BANK LIMITED.....CLIENT/RESPONDENT

[Being a reference on taxation of Advocates/Client bill of costs by the Taxing Master Claire Wanyama on 27th April 2017]

RULING

1. This is a reference against the taxation of the advocates/clients bill of costs. The Advocate/Applicant has filed a Chamber Summons dated **2nd May 2017** seeking the taxation of item (1) of the bill of costs be set aside. As I begin to consider the application, I will cite the case ***KTK Advocates v Baringo County Government [2017] eKLR*** where ***Justice John M. Mativo*** succinctly set out the principle to guide a court when considering a reference such as this. He stated:

“Republic vs. Ministry of Agriculture & 2 others Ex parte Muchiri W’Njuguna & 6 Others [11] Ojwang, J (as he then was) expressed himself inter alia as follows:-

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.....The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors....”

The learned Judge continues to state in that case:-

“it is a well-established principle of review that the exercise of the Taxing Master’s discretion will not be interfered with ‘unless it is found that he has not exercised his discretion properly, as for example, when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.”

2. The above are the perimeters I shall proceed on with the application at hand.

3. The application is supported by the affidavit of ***Catherine Wambui Kinyanjui***. She is an advocate of the High Court. After setting out the claim which the advocate was instructed to pursue on behalf of the client the learned advocate proceeded to depone as follows:

a. THAT while taxing the said bill, the Honourable Deputy Registrar failed to take into account the instruction fees incurred in representing the Respondent’s suit the nature, importance, value of the subject matter and complexity of the matter. (attached hereto and marked RMM/2 is a copy of her ruling and RMM/3 is the letter explaining the reasons for the ruling).

b. THAT while taxing the said bill the Honourable Deputy Registrar failed to take into accounts the energy and time expended in representing the respondent in the said suit.

c. THAT it is therefore unjust for the Honourable Deputy Registrar to dismiss the request for instruction fees provided.

d. THAT I seek the indulgence of the court to set aside the Deputy Registrar's Ruling and allow the firm to recover that which it is rightfully owed.

4. The above is the sum total of the grounds that the advocate seeks item(1) to be set aside.

5. The learned taxing master, in my view, cannot be faulted in the taxation of item (1). In taxing that item the taxing master was guided by the principles in the case **JORETH LIMITED VS KIGANO & ASSOCIATES [2002] 1EA 92**. Further the taxing master guided by **Advocates (Remuneration) Order 2006** determined the appropriate amount in item (1).

6. I can find no error in principle in that taxation. The advocate has also failed to set out where the error, if at all, is. The application is without merit and it is dismissed with costs to the client. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 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