



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**MISC. APPLICATION NO.18 & 19 OF 2016**

**WYCLIFF K. NGENO & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**DAVID CHUMO.....1<sup>ST</sup> RESPONDENT**

**JONAH KIPKOROS CHELULE.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicants, David Chumo and Jonah Kipkoros Chelule were the respondents in High Court Miscellaneous Applications Numbers 18 and 19 of 2016. The applications related to bills of costs filed against the applicants by their counsel, Mr. W.K Ngeno, in respect of professional services rendered to the applicants. A decision was rendered by the taxing master of the court on the two bills of costs in his ruling dated 20<sup>th</sup> September 2016.

2. Aggrieved by the said ruling, the applicants have filed the present application dated 30<sup>th</sup> September 2016 seeking the following orders.

***1. That this application be dispensed with in the first instance.***

***2. That this application be certified as urgent.***

***3. That there be a stay of execution pending interparty hearing.***

***4. That there be stay of the ruling delivered on 20<sup>th</sup> September 2016.***

3. The applicants seek to stop execution of the ruling of the taxing master dated 20<sup>th</sup> September 2016 in which he taxed the Advocate/client bill of costs at Kshs.197,839. The ruling was pursuant to two separate bills of costs against the applicants. The court struck out one of the bills, Misc. Appln. No.19 of 2016, noting that the Advocate had been given joint instructions.

4. The grounds on which the present application is based are that the Advocate overcharged the applicants, contrary to the agreed fees; that he did a shoddy job, and that their matter was taken out on 30<sup>th</sup> October 2014 due to the Advocate's negligence.

5. In their submissions, the applicants argue that they had instructed the respondents to represent them in making a single application for an injunction in Kericho HCCC No.37 of 2011. That they had agreed on a fee of Kshs.10,000, had paid him Kshs.4,000 in cash, and Kshs.6,000 by M-pesa.

6. They submit further that it is embarrassing for an Advocate, who was even willing to do the application for them on *pro bono* basis, to tax the bill of costs while they had agreed on a sum of Kshs.10,000. They ask the court to quash the ruling of 20<sup>th</sup> September 2017.

7. The respondent filed an affidavit in reply and written submissions. He avers that the contents of the applicants' affidavit false and full of half-truths as he had received instructions to represent them in the entire case. He denies that he had agreed with the applicants on the amount of fees. He concedes that he did receive the amounts mentioned by the applicants, which he states will be factored in upon payment of the amount the subject of this ruling. He accuses the applicants of using and dumping advocates once they receive professional fees from them.

8. In his submissions, the respondent notes that the applicants had filed their objection to his two bills of costs on 20<sup>th</sup> June 2016. He denied that he had entered into an agreement on fees with them and accuses them of filing the present application to deny him his fees.

9. I have considered the application and affidavit in support, the affidavit in reply, and the submissions filed by the parties in this matter. I note from the application that the applicants do not challenge the ruling of the taxing master as such. Their problem is that the respondent taxed his costs at all, when they had agreed on a payment of Kshs.10,000. The question is whether this court can interfere with the decision of the taxing master on the basis of the reasons advanced by the applicants.

10. The principles on which a court will interfere with the exercise of discretion by a taxing master are clear. In **First American Bank of Kenya vs Shah and Others [2002] E.A.L.R 64 at 69**, Ringera J (as he then was) observed as follows:

***“First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle”.***

11. The words of Ringera J echo the principles enunciated in the case of **Premchand Raichand Ltd & Another vs Quarry Services East Africa Ltd (1972) EA 162** in which it was held that a court can only interfere with the decision of a taxing master if the taxing master has misdirected himself, has applied wrong principles, or the amount arrived at is manifestly excessive or low.

12. In this case, there is no complaint that the taxing master misdirected himself, applied the wrong principles or made an award that was inordinately high or low. The matters that the applicants now raise before me should have been raised before the taxing master, and from the averments by the respondent, his bills of costs were opposed by the applicants, and one was struck off. It would appear therefore that the taxing master considered the matters raised but nonetheless arrived at the amount of costs of Kshs.197,839.00

13. From the application before me, it would appear that the applicants did not want to pay anything other than a nominal amount to the respondent. They allege that he did shoddy work and that he was negligent, and further that he was only instructed to act for them in a single injunction application. However, these I believe were matters that should have been canvassed before the taxing master. As an advocate, the respondent is entitled to his fees, which in this case the taxing master found he was entitled to, in the sum of Kshs.197,839. I have no basis for interfering with that decision.

14. Accordingly, the application dated 30<sup>th</sup> September 2016 is dismissed with costs to the respondent.

**Dated, Delivered and Signed at Kericho this 31<sup>st</sup> day of May, 2017.**

**MUMBI NGUGI**

**JUDGE**