



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANOUS CIVIL APPLICATION NO 198 OF 2016

MAKUMI, MWANGI ,WANG'ONDU & COMPANY...ADVOCATES

VERSUS

INVESCO INSURANCE COMPANY LIMITED.....CLIENT

RULING

The Application

This ruling is on an application by way of Chamber Summons dated 16th November 2016 brought by the Applicant firm of Advocates, seeking orders pursuant to Rule 11(2) of the Advocates (Remuneration) Order that the decision of the Taxing Master delivered on 31/10/2016 in so far as it relates to taxation of item No. 1 of the Advocates' Bill of Costs dated 23/08 /2016 be set aside, and that this matter be remitted to another Taxing Master for re-taxation of the said item, or in the alternative the item be re-taxed by the Court. The grounds for the application are set out in the said Chamber Summons and in a supporting affidavit sworn on 16th November 2016 by Peter Makumi, an Advocate practicing in the Applicant firm of Advocates. The said firm of Advocates also filed submissions dated 16th March 2017 on the application.

The firm of Advocates had filed a Bill of Costs dated 23.08.2016 seeking the court's assessment of the fees due to it on account of services rendered to the Client in **Machakos CMCC No. 1515 of 2010- Mary Mutie vs Tawa Stage Couch Safaris, Githinji Peter and Michael Kiseve**. The Taxing Master rendered her decision on the said Bill of Costs, wherein she reduced the amount due to the Advocates on account of instruction fees from KShs. 63,000/- to KShs. 42,000/=. The firm of Advocates attached copies of their Bill of Costs dated 23 .08.2016, of the Taxing Master's ruling of 31.10 .2016 and the reasons for her ruling.

The Advocates contend that the Taxing Master misdirected herself by misinterpreting the provisions of Schedule VII of the Advocates (Remuneration) (Amendment) Order, 2009, and erred in principle by failing to apply the provisions of Schedule VIIB of the Advocates (Remuneration) (Amendment) Order, 2009 in the assessment of the sum due to the Advocates on account of item No. 1 of the Advocates' Bill of Costs. Further, that she failed to distinguish between the instruction fees applicable as between Party and Party under Schedule VIIA of the Advocates (Remuneration) (Amendment) Order, 2009 *vis-a-vis* the enhanced instruction fees applicable as between an Advocate and client under Schedule VIIB of the said Remuneration Order.

According to the Advocates, their Bill of Costs is an advocate-client bill and as such, it was drawn in accordance with the provisions of Schedule VII B of the Advocates (Remuneration) (Amendment) Order , 2009 which provides that an advocate-client bill of costs is to be drawn and assessed in

accordance with the figures provided in Schedule VIIA of the Advocates (Remuneration) (Amendment) Order, 2009 and then increased by one half.

That in this respect, the judgment in the primary suit, upon which the instruction fees was based, was for Kshs.125,000/-, and Schedule VII A of the Advocates (Remuneration) (Amendment) Order, 2009 provides for instruction fees of Kshs. 25,200/- as between party and party in a matter where judgment of KShs.125,000/- is awarded. Therefore, that the Taxing Master ought to have increased the instruction fee by one half to KShs. 37,800/; which she failed to do, and that in the reasons given by the Taxing Master in her letter of 7/11/2016, she does not appear to distinguish between a bill for an advocate-client and one between parties, and also fails to distinguish between the provisions of Schedule VII A of the Advocates (Remuneration) (Amendment) Order, 2009 and those of Schedule VII B of the Advocates (Remuneration) (Amendment) Order, 2009.

The Client did not respond to the application despite being served with the same and a notice of the hearing.

The Issues and Determination

I have considered the arguments made by the firm of Advocates, and find that there are two issues for determination. The first is what is the applicable Advocates (Remuneration) Order and Schedule in the taxation of the Advocate's Bill of Costs dated 23.08.2016; and secondly, whether the Taxing Officer erred in the taxation of item 1 in the said Bill of Costs.

On the first issue, the transaction giving rise to the Advocate's Bill of Costs is a civil suit filed in the Chief Magistrates Court at Machakos in **Catherine Munywoki vs Tawa Stage Couch Safaris and 2 Others, Civil Suit No 1515 of 2010**, in which the Advocates were given instructions by the Client to defend the claim, and in which judgment was agreed upon at Kshs 400,000/=. As at the date of filing suit, the applicable law as regards taxation of Bill of Costs was the Advocates (Remuneration) Order of 2009, which under Rule 51 provided that the scale of costs applicable to proceedings in subordinate courts (other than Kadhi's courts) is that set out in Schedule VII of the Order.

Part B of Schedule VII provides for the fees to be charged in Advocate and Client Costs as follows:

**“As between advocate and client the minimum fees shall be –
(a) the fees prescribed in A above increased by one-half or
(b) the fees ordered by the court increased by the one-half
(c) the fees agreed by the parties under paragraph 57 of this order, increased by one-half, as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.”**

The reference to “A above” is to Part A of Schedule VII, which provides for the scales for payment of instruction fees in paragraph 1 thereof. According to the said scales, where the value of the subject matter in the suit is between Kshs 250,000/= and Kshs 500,000/=: the instruction fee chargeable on the higher scale is Kshs 42,000/=:

The argument that this fee ought to have been increased by one half has merit, as the same is clearly provided for by Part B of Schedule VII which is the applicable schedule, and as is shown in the foregoing. The finding and ruling by the Taxing Officer that only Schedule VIIA 1 was applicable in taxing the instruction fees at Kshs 42,000/= was therefore in error.

I therefore accordingly order that the decision of the Taxing officer in the ruling delivered on 31/10/2016 in so far as it relates to taxation of item No. 1 of the Advocates' Bill of Costs dated 23/08/2016, be and is hereby set aside. I accordingly hereby re-tax item 1 of the of the Advocates' Bill of Costs dated 23/08 /2016 on account of services rendered to the Client in **Machakos CMCC No. 1515 of 2010- Mary Mutie vs Tawa Stage Couch Safaris, Githinji Peter and Michael Kiseve** at Kshs 63,000/=:

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 4th day of August 2017.

P. NYAMWEYA

JUDGE