



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC APPLICATION NO. 592 OF 2015

GITONGA MURIUKI & COMPANY ADVOCATES...ADVOCATE/APPLICANT

- VERSUS -

TELEPOST CO-OPERATIVE SAVINGS &

CREDIT SOCIETY LIMITED.....1ST CLIENT/1ST RESPONDENT

POSTA INVESTMENT CO-OPERATIVE

SOCIETY LIMITED.....2ND CLIENT/2ND RESPONDENT

RAPHAEL KIOKO MASEKI.....LIQUIDATOR/3RD RESPONDENT

RULING

The Applicant, a firm of Advocates, filed a Chamber Summons dated 14th December, 2016 under Order 11(2) of the Advocates Remuneration Order seeking orders that the decision of the taxing master the Hon. F. Rashid (DR) made on 27th October, 2016 on the bill of costs dated 17th December, 2015 be set aside and the bill be taxed afresh and the costs of the Application be provided for.

The grounds of the Application are that the Taxing Master erred in law and in fact in holding that the bill of costs should have been taxed at Kshs. 4,031,130/= instead of Kshs. 21,029,796/=. The taxing master failed to consider the value of the subject matter being Kshs. 1,257,000,000 as per the transfer document or even Kshs. 725,000,000/= as pegged by the Respondents in the Affidavit in the subject suit and that V.A.T was not factored in for by the taxing master. The Applicant also states that the Taxing Master erred in fact and in law by failing to award the Applicant 1/3 of the taxed amount being getting up fees.

The application was opposed by the 2nd Respondent through a Replying Affidavit of MARYANNE NDEKEI who stated that the SACCO was not informed of the taxation of the bill by the Advocate. She further avers that the subject suit was for unliquidated claim seeking orders for a permanent injunction and the value of the property was not in dispute. She also avers that V.A.T was not among the items in the bill of costs and getting up fees was properly awarded.

This Application is brought under **Order 11 (2)** of the Advocates Remuneration Order which provides that;

The taxing officer shall forthwith record and forward to the objector the reasons for his decision

and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

I have considered the application filed herein and the submissions by both parties. The first item in contention in this case is the instruction fees. The Applicant's case is that the learned taxing master did not consider the value of the property during taxation. I note that the subject suit was seeking for an order for a permanent injunction restraining the Defendants from selling, leasing, disposing off and transferring Land No. L.R 209/10566 situate in Nairobi.

In determining the instruction fees, a court will consider the value of the subject matter which is derived from the pleadings, judgment and/or settlement. The subject suit was withdrawn less than 4 months after it was filed in which case instruction fees would only be determined from the pleadings. A taxing master can as well exercise his/her discretion in ascertaining the instruction fees in a manner which is just and fair considering the circumstances of the case. These principles were set out in the case of **Joreth Limited Vs. Kigano & Associates Civil Appeal No. 66 of 1999 (2002) 1 EA** where the Court stated that,

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a Bill of Costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account amongst other matters the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

In determining the instruction fees at Kshs. 3,000,000/= the taxing master, in her ruling stated that she considered the fact that the claim was non-liquidated and the fact that the suit was withdrawn before it proceeded to full hearing. The Court finds that the taxing master properly exercised her mind in determining the instruction fees considering the aforesaid reasons. The court reiterates that the test for interference is where an error of principle has been made; this court is satisfied that the taxing master properly exercised her discretion in making an award that was reasonable as the instruction fee.

As was observed in **Republic Vs. Ministry of Agriculture & 2 Others Ex parte Muchiri W'njuguna & 6 Others**, I will also reiterate that *taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere particularly where the taxing officer is one of great experience merely because it thinks the award somewhat was too high or too low* ...

The Applicant also stated that the taxing master erred in law and fact by refusing to provide for V.A.T which is a statutory provision. In her ruling, the taxing master properly addressed this item in the last paragraph of the ruling where she stated that,

“...being an advocate client bill of costs, the applicant would have asked for VAT at 16%. The Applicant has not done that and the court can therefore not award what the party has not asked for.”

I will not dwell on that. Also the allegation by the Applicant that the Taxing Master erred in law and fact by refusing to award 1/3 of the instruction fees being the getting up fees are unfounded. In her ruling, the taxing master awarded the sum of Kshs. 1,000,000 as getting up fees being 1/3 of Kshs. 3,000,000/=.

For the foregoing reasons, the court finds that the Applicant's Chamber Summons application dated 14th December, 2016 is unmeritorious and the same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at Nairobi this **19th** Day of **October**, 2017.

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L. NJUGUNA

JUDGE

In the Presence of

..... for the 1st Client/Respondent

..... for the 2nd Client/Respondent

..... for the Liquidator/3rd Respondent