



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KAJIADO**

**MISC. NO. E019 OF 2021**

**JOYCE WANGECI RUGA(suing as the personal Representative of the Estate of RUGA**

**GITUKU(deceased).....PLAINTIFF/APPLICANT**

**VERSUS**

**PHILIP OLE SIRONKA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**HANNAH GATHONI RUGA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

This ruling is on the Chamber Summons dated 10<sup>th</sup> September, 2021 which seeks two (2) prayers namely;

1. That the decision of the Taxing Master taxing the second Defendant's/Applicant 's party and party bill of costs dated 28<sup>th</sup> April, 2021 and rendered on 30<sup>th</sup> August, 2021 be reviewed and/or set aside.
2. That the same bill of costs dated 28<sup>th</sup> April, 2021 be remitted back to the Taxing Master for re assessment.
3. That the costs of this application be provided for.

The grounds for seeking the above orders are that the Taxing Master awards were so excessive as to manifest an error of principle, that he did not apply the laid down principles of taxation, that he failed to give sufficient grounds or reasons to justify the award and that the misdirected himself on the discretion and awarded costs that were manifestly excessive as to justify interference from this Court.

The application is supported by an affidavit dated 10<sup>th</sup> September, 2021 sworn by one J.M. Kinuthia in which he deposes that the award of costs of Kshs. 752, 283.60 was not supported by sufficient reasons and did not follow the principle of taxation laid down in the Court of Appeal in the case of *Premchand Raichard Limited and another –versus- Quarry Services of East Africa Limited (1972) EA 162*.

The application is opposed by the second Defendant/Respondent who has sworn a replying affidavit dated 25/10/2021 in which she supports the assessment of costs by the Deputy Registrar saying that he applied the law correctly and the Chamber Summons dated 10<sup>th</sup> September, 2021 should be dismissed with costs.

I have carefully considered the entire Chambers Summons including the affidavits, the record and the case law applicable.

I find that the following issues arise;

- (1) Did the Applicant file any response to the bill of costs?
- (2) In the current application, has she placed any material before the Court to show that the Taxing Master applied the wrong principles of law or that the amount awarded was excessive?
- (3) Did the Taxing Master give good reasons for assessing the costs the way he did?

On the first issue, I find that even though the Applicant was served with the Bill of Costs on 9<sup>th</sup> June, 2021, she did not file any objection to

the bill. Had she done so, the Taxing Master would have had material to consider.

The Applicant lost a good opportunity to have participated in the taxation of costs.

Secondly, in the current application, the Applicant has not placed any material to guide the Court on how, in her view, the costs should have been taxed. This means that her view or opinion is not yet on record so that even if the taxation were set aside, there would be no basis upon which review would proceed.

On the third issue, I find the taxing master gave very good reasons for reducing the instruction fees from Kshs. 16, 620, 000/= to Kshs. 500, 000/= namely that the value of the subject matter could not be established from the pleadings or the award.

Given those circumstances, the amount to award was within the discretion of the Taxing Master.

I find that he exercised that discretion correctly.

For the above reasons, I dismiss the Chambers Summons with costs to the Respondent.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF JANUARY, 2022.**

**M.N. GICHERU**

**JUDGE**