



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 183 OF 2004

In the matter of the Estate of GATUMU KAMANJA Alias JAMLECK IRERI (Deceased)

ELIAS NJOGU.....PROTESTER/APPLICANT

VERSUS

GICHOVI MBORA.....PETITIONER/RESPONDENT

RULING

1. This is the application dated 12/11/2015 seeking for orders that the court be pleased to review or set aside the taxation of the bill of costs dated 6/8/2015 and order re-assessment of items 1 to 23. The application is supported by the affidavit of Elias Njogu Nguu. In the affidavit it is stated that the respondent filed his bill of costs dated 6/8/2015 drawn at Kshs.131,590/=.
2. The applicant's advocate submitted that the bill should be assessed at Kshs.25,500/=. In the ruling dated 21/10/2015 the same was taxed at Kshs.91,810/=. The applicant was aggrieved and wrote to the deputy registrar. The bill of costs was excessive, unjustified and not drawn to scale. It was drawn on the wrong schedule of the Advocates Remuneration order.
3. In the replying affidavit, the respondent stated that the orders sought cannot be granted as the court is *functus officio*. The taxing master was correct in his assessment.
4. The application was argued by way of written submissions.
5. The applicant submitted that the taxing officer did not give reasons for taxing the bill within fourteen days after the applicant's advocate wrote to him. It was wrong for the respondent's advocate to use the wrong schedule of the remuneration order.
6. The respondent submitted that the court should not upset taxation by the taxing master unless the same was based on a wrong principle. The applicant's argument that the bill of cost was drawn under the wrong schedule V1 instead of schedule X is misplaced. The applicant's assertion that the taxing master did not give reasons for his taxation is not justified as the letter to the taxing master dated 23/10/2015 only stated that the applicant objected to the items of taxation but did not seek any reasons from him. That omission amounted to vagueness of the notice. The applicant's bill is purely based on quantum which cannot warrant reassessment of the bill.
7. The respondent cited and attached the following decisions;

MACHIRA & CO ADVOCATES VS FITTED TO DEAL PARTICULAR ARTHUR K. MAGUGU & ANOTHER [2012] eKLR where the court held that the notice issued by the

respondent did not specify the items objected to. If vague notices are given, taxing officers might be forced to give their reasons for their taxation of each item including the items that have not been objected to.

8. **KIPKORIR, TITOO & KIARA ADVOCATES VS DEPOSIT PROTECTION FUND BOARD [2005] eKLR** where the court held that the court will only interfere where there is an error of principle and that matters of quantum are regarded as matters with which the taxing officers are particularly fitted to deal with and the court will only interfere in exceptional circumstances.

9. The law applicable in this application is Order 11 of the Advocates Remuneration Order which provides:-

(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items 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.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.

10. The principles that guide the court in taxation are well settled in the court of appeal in the case of **PREMCHAND RAINCHARD LTD AND ANOTHER VS QUARRY SERVICES OF EAST AFRICA LTD AND OTHERS EALR [1972] E.A 162** cited in the case of **WAMBUGU, MOTENDE & VS KAMAL BHUSAN JOSHI & 3 OTHERS [2015] eKLR** as follows:-

- *That the costs be not allowed to rise to such a level as to confine access to the courts to the wealthy.*
- *That the successful litigant ought to be fairly reimbursed for the cost he has had to incur.*
- *The general level of remuneration of advocates must be such as to attract recruits to the profession.*
- *That so far as practicable there should be consistency in the awards made.*
- *The court will only interfere when the award of the taxing officer is so high or low as to amount to an injustice to one party.*
- *In considering the bills taxed in comparable cases an allowance may be made for the fall in value of money.*

11. The issue which arises herein is whether the court should review or set aside the ruling of 21/10/2015 for taxation of the bill of cost dated 6/8/2015.

12. It was contended that the notice sent to the Deputy Registrar was vague. The letter addressed to the taxing officer dated 23/10/2015 stated:-

“Notice is hereby given that the protestor/applicant herein objects to the Decision/Ruling made on 21st October 2015 for the Bill of costs in this matter.

The protestor/applicant objects all the items of taxation i.e. item 1 – 23 in the bill.”

13. The notice by the applicant to the taxing officer was therefore specific that the objection was in respect of all the items on the bill of taxation being item 1 to 23. The respondent’s assertion that the notice did not mention specific items is incorrect.

14. The applicant has alleged that the taxing master ought to have based his finding on Schedule X and not Schedule V1. Schedule X deals with probate and administration matters while Schedule V1 deals with proceedings before the High Court.

15. Some of the items in the bill include filing an application for objection (item 4) and attendance in court for hearing of the application, filing of the application dated 16/8/2011 (item 8) for confirmation of grant and attendance of court for hearing of the said application. Others were the replying affidavit filed on 6/6/2013 (item 13) against the application dated 14/5/2013 for stay of execution of the confirmed grant and review of the ruling of 18/4/2013 and the advocates' court attendance for the said application.

16. This being a probate and administration matter, the appropriate schedule would have been Schedule X and not schedule V1 which relating to proceedings in the high court.

17. The applicant has shown that he filed an objection before the taxing master who is obligated by virtue of Order 11 of the Advocates Remuneration Order to give reasons for his decision. The applicant is not required to state in the notice that he desires to be provided with reasons.

18. It is the law which places an obligation on the taxing master to provide reasons for his decision once he receives the objection. Failing to give reasons for the decision on taxation upon receiving the notice is an abdication of responsibility on the part of the taxing master. The parties are entitled to know the reasons behind the taxation of the bill.

19. I am satisfied that the application is merited. I hereby order that the ruling on the taxation of the bill of costs dated 6/8/2015 be and is hereby set aside. The bill will be taxed before another taxing master other than Hon. Nyakundi.

20. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF SEPTEMBER, 2016.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Ndorongo for Fatuma for Petitioners/Respondent