



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 186 OF 2000

KIAMBU COUNTY COUNCIL.....PLAINTIFF

VERSUS

COFFEE BOARD OF KENYA

**SAMUEL MBUGUA KIBATHI THE CHAIRMAN, KIAMBU COFFEE CESS.....
DEFENDANTS**

RULING

1. Before is a Chamber Summons dated 22nd May, 2013 seeking:-

- a. That the decision of the Taxing Officer Hon A. K. Ndungu delivered on 9th May, 2013 in respect of the Plaintiff's party and party bill of costs dated 10th August, 2011 be set aside on the following items of the bill, No. 3, 51, 74, 154, 155, 255, 295, 304, 409, 468, 469, 476, 477, 485, 493, 573 and gross total tabulation.
- b. That this court be pleased to make necessary adjustments to the taxation on the above items as proposed or as the justice of the case may require, in lieu of remitting the contested items back to a taxing officer.

2. The application is premised on the supporting affidavit of Frankie Welikhe sworn on 22nd May, 2013 and grounds that the taxing officer erred in; proceeding to prematurely and arbitrarily assess, without jurisdiction, proper basis or discretion, the instruction fee and getting up fee on the basis of a preliminary decree that ordained for the taking of accounts to establish the value of the subject matter, yet such accounts had not been taken and the decree had not been made final, hence usurping the power of the court on that matter; alternatively, having found, as a fact, that the Plaintiff had constructively/implicitly waived the taking of accounts, the taxing master erred by failing to disallow the items on instruction fee and fee for getting up and preparing for trial which were inextricably tied to and exclusively dependent on the results of the account taking exercise; in the further alternative, the taxing officer erred in principle and wrongly exercised his discretion in a manner that was unjustified, oppressive and not judicial by increasing the adjudged instruction fee of KShs. 1,545,071/25 by more than double to 229.44386% thereof being KShs. 3,545,071/25 grossly excessive and gratuitous, hence also awarding on unconscionable amount in getting up fee; the taxing officer erred in allowing any costs under items 51, 154, 155 under the Advocates (Remuneration) Order; the taxing officer erred in principle by failing to consider and/or tax off the claim under items 74 and 573 under the Advocates (Remuneration) Order; the taxing officer erred in principle by failing to reduce the bill under items 255, 295, 409, 468, 469, 476, 477, 485 and 493 hence unjustly enriching the Plaintiff at the expense of the 1st Defendant and that the taxing officer erred in principle by failing to appreciate that the billed sum amounted to KShs. 267,500,785/= instead proceeded on the wrong premise that the tally was KShs. 268,179,365/= as misrepresented on the bill, hence

wrongly allowed an unjustified surplus of KShs. 678,580/= in favour of the Plaintiff and against the 1st Defendant.

3. The application is opposed by the replying affidavit of Joseph Kuria Kiruthi sworn on 21st June, 2013. He contended that the summons offends the provisions of Rule 11 of the Advocates (Remuneration) Order. That the summons is grounded on matters that have nothing to do with the party and party bill of costs dated 10th August, 2011. That since the reasons given by the taxing officer for his decision are not annexed to the application, he is unable to respond to the issues raised therein; that the Plaintiff has never constructively waived the taking of accounts; that there were no valid reasons advanced by the 1st Defendant to require the taxing officer to disallow items 51, 154 and 155 under the Remuneration Order; that getting up fees accrues automatically upon an advocate taking certain steps after receiving instructions in preparation for the hearing of a suit and that the said steps including the trial itself have already been completed; that the 1st Defendant declined to give an account of the figures they embezzled and the Plaintiff rightfully filed its bill based on the admitted figures for taxation; that items 255,295,409,469,477 485 and 493 a and all others challenged re properly and accurately taxed.

4. The application was canvassed by way of written submissions which were highlighted. The said submissions essentially reiterated the parties averments in the affidavits which I have considered together with the authorities cited therein.

5. It has been emphasized in vast authorities among them **Kipkorir, Titoo & Kiara Advocates v. Deposit Protection Fund Board (2005) 1KLR 528 at page 535** and **Arthur v. Njeri Electricity Undertaking (1961) EA 497**, that the judge will not interfere with the exercise of the discretion of the taxing officer unless the taxing officer erred in law. The error in principle by the taxing officer, if any, can only be established if the ruling is availed to the judge sitting on a reference. Without such ruling the judge's hands are tied to make any decision. I am fortified by the case of **Ahmed Nassir, Abdikadir & Co. Advocates v. National Bank of Kenya Ltd Nairobi HC Misc. Appli. No. 750 of 2004 (UR)** where it held that it was mandatory for a party making reference in respect of a taxation to annex a ruling outlining reasons of the taxing master's decision. In the circumstances, the application herein fails. Orders accordingly.

Dated, Signed and Delivered in open court this 13th day of February, 2015.

J. K. SERGON

JUDGE

In the presence of:

Odati h/b for Mwaura for the Plaintiff

Maweu for the 1st Defendant

N/A for the 2nd Defendant