

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 76 OF 2008

KWIK FIT TYRES & AUTOCARE LIMITED APPELLANT

V E R S U S

MOHAMED SALIM JUMA 1ST RESPONDENT

JUMA ALI MOHAMED 2ND RESPONDENT

MUNICIPAL COUNCIL OF MOMBASA 3RD RESPONDENT

RULING

1. Chamber Summons dated 15th July 2013 is a reference by the Plaintiff in respect of the 1st and 2nd Defendants' Bill of Costs as against the Plaintiff taxed on 24th May 2013. Although the Plaintiff sought by that Chamber Summons to challenge various items in the Bill of Costs at the hearing of the Chamber Summons the learned Counsel for the Plaintiff abandoned that challenge and limited the reference to the arithmetical calculation of the instructions fees in the Bill of Costs. He drew the attention of the Court to what he termed as a problem with the calculation of the instruction fees after deduction of the amount taxed off by the Taxing Master.
2. It does seem that the Plaintiff learned Counsel did not have the full copy of the Taxing Master's ruling of that taxation. Strangely, however, the copy of the Chamber Summons he served on the 1st and 2nd Defendants Advocate had the full ruling. It would seem that the Plaintiff in view of the missing page of that ruling mistakenly formed the view that the Taxing Master had made an arithmetical error.
3. I can confirm that I have perused the Taxing Master's ruling of 24th May 2013 and I have found that the Taxing Master did not make an error in calculating the taxed amount after deducting the instructions fees.
4. The Taxing Master considered the instruction fees as drawn in the Bill of Costs that is for Kshs. 250,000/- which he found the correct amount under paragraph (1)(iii) was Kshs. 116,450/-. After considering the importance of the matter the research undertaken the Taxing Master proceeded to increase that amount to Kshs. 180,000/-. All the other items were found by the Taxing Master to be drawn as per the scale. Taking into account the amount taxed off Kshs. 70,000/- the final Certificate of Costs for Kshs. 233,584/- reflects the correct amount.
5. For that reason the Plaintiff's Chamber Summons dated 15th July 2013 is dismissed with costs to the 1st and 2nd Defendants.

Dated and delivered at Mombasa this 31st day of October, 2013.

MARY KASANGO

JUDGE