



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 292 of 2007

MURIU, MUNGAI & CO. ADVOCATES ADVOCATES/APPLICANT

VERSUS

NEW KENYA CO-OPERATIVE CREAMERIES LTD CLIENT/RESPONDENT

RULING

1. By a ruling delivered by the Taxing Master on the 16th July 2007 M/s Muriu Mungai & Co. Advocates (herein after referred to as “the Advocates”) were awarded a sum of Ksh.295,113.00/- being the costs due to the Advocates from New Kenya Co-operative Creameries (herein after referred to as “the Client”). The genesis of the instructions to the Advocates can be traced to the instructions given by the client to the Advocates to transfer a property known as **MOMBASA XIX/217**. Being aggrieved by the ruling of the taxing master the Client filed a chamber summons under the provisions of rule 11(2) of the Advocates Remuneration Order.
2. The decision by the taxing master is challenged for allowing items Nos. 1, 2, 5, and 6 of the bill of costs. The applicants seeks for an order that the decision be set aside or valid as the court may deem fit. This application is premised on the grounds that the taxing master misdirected herself on both law and facts and thereby awarded a sum that was manifestly excessive based on erroneous legal principals. The taxing officer is also faulted for allowing fees for services that were not clearly rendered by the respondents. This application was also supported by the affidavit of **Peter Kennedy Ombati** sworn on 19th October 2009.
3. In further arguments counsel for the Client submitted that the taxing master failed to consider that the advocate did not complete the instructions. The transaction was not completed and awarding instruction fees for work which was not done was an error in principle. As regards item No.2 it was also not clear whether the assignment was registered in favour of the Client. Also item 3 which relates to transportation to Mombasa Lands Office could not have been awarded because there was no evidence that the transfer was registered.
3. This application was opposed by the advocates. They relied on the grounds of objection filed on 12th November

2009. it is contended that the application is incompetent and fatally defective for failure to comply with the mandatory provisions of the law. The affidavit filed in support of the application is also faulted for being defective and bad in law. Finally the application is challenged for being an after thought and intended to delay the end of litigation. Counsel for the advocate further argued that for the court to interfere with the assessment by the taxing master there must be a clear demonstration of an error of principle. The bill was taxed according to the value of the suit premises which was premised on the valuation report by Tysons Limited and the sum of Ksh.188,000.00/- is what is provided for under the Advocates Remuneration Order. The advocates had done substantial work before the instructions were withdrawn due to breakdown of the Client/Advocate relationship. Counsel urged the court to dismiss the application with costs. The principles to guide the court on whether to interfere with the decision of the taxing master are well settled. Firstly the court cannot interfere with the discretion of the taxing master unless the fees awarded is manifestly excessive or too low as to represent an error in principle. What constitutes an error in principle can be discerned if the following factors were not considered by the taxing officer while making the assessment.

- i) The nature and the importance of the matter.
- ii) The amount of the value of the subject matter involved.
- iii) The interest of the parties and the general conduct of the proceedings.

See the case of **First American Bank of Kenya vs Shah and Others EALR (2002) 1EA Page 64 the judgment of Ringera J** where it was held:-

“The High Court was not entitled to upset a taxation merely because, in its opinion, the amount awarded was high and it would not interfere with a Taxing Officer’s decision unless the decision was based on an error of principle or the fee awarded was so manifestly excessive as to justify and inference that it was based on an error of principles (Steel Construction Petroleum Engineering (EA) Limited v Uganda Sugar Factor (1970) EA 141 followed. Under the Advocates (Remuneration) Order, some of the relevant factors to be considered were the nature and importance of the matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge.”

4. It is contended that this transaction was not completed. I have gone through the proceedings before the taxing master as well as the decision which contains the reasons for taxation. It is evident that the taxing officer did not consider the issue of whether the work was done according to the instructions which is a relevant factor to take into consideration in assessing the instruction fees. Had the taxing officer addressed her mind to the issue of the amount of work which was done, this would have led her to find out whether the amount of work done by the advocates was worth the amount of fees awarded. The same reasoning would have applied for items No.1,2,3 and 6 of the bill of costs. Moreover there are written submissions by

counsel for the Client which were filed in court on 15th June 2007. It is not clear whether the learned taxing officer took into account those submissions which clearly pointed out that the advocate had not executed the instructions given by the client to transfer the suit premises.

5. In the premises I need not say any more, there was an error in principle and this application should be allowed. Counsel for the Advocate challenged the competency of the reference on the grounds stated in the objection, however no arguments were presented at the hearing to expound on this reference offends the law. I find no substantive breach of the procedure going by the correspondence written by counsel for the client seeking to be furnished with the reasons by the taxing officer which were not forth coming. It can safely be concluded that the advocates substantially complied with the provisions of rule 12(2) of the Advocates Remuneration Order.

6. For the foregoing reasons, the application is allowed, the decision of the taxing officer made on 16th July 2007 allowing items 1,2,3 and 6 of the bill of costs is set aside. The bill may be taxed by another taxing officer who should take into account the scope of the instructions and the work done by the Advocates.

RULING READ AND SIGNED ON 26TH MARCH 2010 AT NAIROBI.

M.K. KOOME
JUDGE