



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

**Civil Case 1179 of 2007**

**MUTULI & APOPO ADVOCATES ..... PLAINTIFF**

**VERSUS**

**HON. CYRUS JIRONGO ..... DEFENDANT**

**RULING**

1. By a ruling of Deputy Registrar delivered on 2<sup>nd</sup> July 2009 the taxing master taxed the Advocates' bill of costs for Ksh.501,640 in favour of the applicant Ms Mutuli and Apopo Advocates (hereinafter referred to as 'the advocates'). This bill of costs was in respect of professional services rendered in favour of the client by way of representation of the Client before the **Goldenberg Commission of Inquiry**. The client was mentioned before that Tribunal where the advocates made several appearances to represent the client. Being aggrieved by that ruling, by the Taxing Master, the advocate filed the chamber summons application which is expressed to be brought under the provisions of **Order 11(2) of the Advocates Remuneration Order**.

2. The advocate is seeking for orders that the ruling by the taxing master of 2<sup>nd</sup> July 2009 be set aside and the bill of costs dated 13<sup>th</sup> July 2007 be remitted for taxation regarding item No.1 before a different taxing officer. This application is based on the grounds that the taxing officer failed to set out the basic instructions fees and grossly misdirected himself in assessing the legal fees due to the advocates. The taxing officer was also faulted for failing to appreciate the extent and involvement of carrying out the instructions and the relevant factors especially by ignoring and holding that 1.6 billion could not have been the subject matter before the **Goldenberg Commission of Inquiry**. The ruling by the taxing officer was also challenged for failing to take into account the laid down principles in assessing the value of the instructions carried out by the advocates, the volume of work, and involvement.

3. The advocates also relied on his own supporting affidavit in which he has explained further how he carried out the instructions in defending the client before the **Goldenberg Commission of Inquiry**. The advocate further argued that

the amount awarded is not commensurate to the work done which negates the principle that fees should be reasonable such as to attract the best brains into the profession and not to lower the standing of the profession. He contended that he attended the hearing for two and half months. The matter was of immense public importance and captured public interest. There were voluminous documents to peruse. The complexity of the matter clearly shows the assessment of Ksh.500,000/- was too low as to present an error or principle.

4. This application was opposed by the client, counsel relied on the replying affidavit sworn by **Cyrus Njirongo** sworn on 3<sup>rd</sup> March 2010. Counsel defended the order by the taxing officer and urged the court to find that there was no matter of principle that was ignored during the taxation. The subject matter could not have been assessed for one billion shillings because no award was likely to result from the findings of the Tribunal. He urged the court to uphold the decision of the taxing master.

5. In analyzing the issues raised in this application, the principles to bear in mind have been set out in along line of authorities in particular the case of **Premchand Raichand Ltd and Another v. Quarry Services of East Africa Ltd and Others EALR [1972] E.A.**. The court of Appeal in that case held that;

**“(i) The court must consider the following principles:**

*(a) that costs be not allowed to rise to such a level as to confine access to the courts to the wealthy;*

*(b) that successful litigant ought to be fairly reimbursed for the costs he has had to incur;*

*(c) that the general level of remuneration of advocates must be such as to attract recruits to the profession; and*

*(d) that so far as practicable there should be consistency in the awards made;*

**(ii) The court will only interfere when the award of the taxing officer is so high**

**(iii) Or so low as to amount to an injustice to one party;**

**(iv) In considering bills taxed in comparable cases an allowance may be made for the fall in value of money;”**

6. I am also persuaded by the principles set out in the case of **First American Bank of Kenya vs Shah and Others EALR (2002) 1EA Page 64** the judgment of **Ringera J** (as he then 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.”*

7. I have gone through the ruling by the taxing master. He correctly found that there was no agreement in writing over the fees payable by the client to the Advocates. He also found that there was no basis for instruction fees which was sought for Ksh.36,060,000/- as instruction fees based in aggregate sum of Ksh.1.6 billion which was the value of the subject matter before the tribunal. The learned taxing officer held as follows:-

***“I am totally at a loss as to where that figure was plucked from and the same cannot be the value of the subject matter. In the bill there is no item for perusal because the number and length of the papers to be perused were minimal. Obviously the Goldenberg Commission of Inquiry was naturally, important and the respondent must have taken very keen interest in the same. Ordinarily there is no party who appears before a judicial body for whatever matter without being interested in such a matter but I am unable to accept the proposition that the respondent’s interest in the matter was with over Ksh.36,060,000/- sought by the applicant as instruction fees.***

***With regards to the complexity of the matter, the applicant did not demonstrate how complex the matter was and what as counsel they did to surmount the complexity. Assuming that they carried out research then that is not one of the reasons to be considered in determining instruction fees.”***

8. I agree no evidence was adduced regarding the exact value of the subject matter. I am also aware no value could be ascertained as regards the adverse mention of the client in the proceedings before the Tribunal and no order was made against the client by the Tribunal. However there are factors that the taxing master did not take into account in arriving in his decision. For instance the holding that the advocate did not demonstrate the complexity of the matter, in my opinion this is an error of principle. It is discernable from the bill of costs and the submissions by the advocate that this was a complex matter which elucidated enormous public interest. Secondly, there were volumes of records to peruse. The proceedings went on for two and half months and the advocate attended to represent the client.

8. All those attendances are contained in the bill of costs. The correct schedule as submitted by the advocate is schedule 5 of the Advocates Remuneration Order which is applicable for fees in respect of business the remuneration for which is not otherwise prescribed in the remuneration order. Part II provides that instruction fees shall be assessed having regard to the care and labour required, the number and length of papers to be perused and the nature or importance of the matter, the amount of value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances of the case which may be fair and reasonable but so that due allowance is to be given in the instruction fee for other charges raised under this schedule.

9. I find all these principles were not taken into consideration by the taxing master especially when he taxed off instruction fees and disallowed Items 2 - 61. This represents an error of principle. For the above reasons I set aside the order by the taxing master **S.A. Okato** dated 2<sup>nd</sup> July 2009. I direct the bill of costs to be fixed for taxation before

another Deputy Registrar who shall be guided by the provisions of Schedule V of the Advocates Remuneration Order and as regards the instruction fees, to take into account all the relevant elements which are stated in this ruling so as to arrive at a reasonable sum that will represent a fair assessment of the services rendered by the advocates to the client.

This application is allowed with costs to the advocates.

**RULING READ AND SIGNED ON 4<sup>TH</sup> JUNE 2010 AT NAIROBI.**

**M.K. KOOME**  
**JUDGE**