



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Miscellaneous Application 60 of 2007**

**HAVELOCK, MURIUKI & RAVAL ADVOCATES ....ADVOCATE/APPLICANT**

**VERSUS**

**JAYANTILAL DHARMASHI DOSRANI ..... CLIENT/RESPONDENT**

**RULING**

1. By a ruling of Mr. S.A. Okato the Deputy Registrar delivered on 17<sup>th</sup> February 2010, the applicant's bill of costs was struck out in entirety on the grounds that item number 44 of the Bill of Costs offended the provisions of paragraph 69(3) of the Advocates Remuneration Order. The applicant filed the chamber summons dated 13<sup>th</sup> June 2010 seeking to set aside the order by the Taxing Officer delivered on 17<sup>th</sup> February 2010 and the Bill of Costs dated 20<sup>th</sup> July 2006 be referred for taxation before a different taxing officer.
2. This application is premised on the grounds that the taxing master acted in excess of the jurisdiction conferred by the Advocates Remuneration Order. He also mis directed himself and acted contrary to established principles of law. The decision to strike the entire bill of costs on the grounds that item No. 44 offended the provisions of paragraph 69(3) of the Advocates Remuneration Order was irrational, capricious and a wrongful exercise of judicial expression. Thus the ruling manifested an error of principle.
3. This application is supported by the affidavit of **Jonathan Mbowen Havelock** sworn on 13<sup>th</sup> May 2010. The matters deposed to in the affidavit elaborate the above grounds. Mr. Masika learned counsel for the applicant submitted that the learned taxing officer erred in principles by striking the entire bill of costs instead of striking out the offending item No. 44. He relied on a decision by **Kimaru J** who determined a similar matter in **Mbugua and Mbuga Advocates vs Ken India Assurance Company Limited Misc. Appl. No.1331 of 2006** in particular the findings that:-

*“... Paragraph 69(3) of the Advocates Remuneration Order does not give jurisdiction to a taxing officer to strike out an entire bill of costs if an item on attendance during taxation is included in the said bill of costs. By striking out the entire advocate-client bill of costs, on the flimsy ground that the*

*advocate had included fee for attendance during taxation in their bills, the taxing officer acted irrationally, and in fact, wrongly exercised his judicial discretion. He committed an error of principle which is amenable to rectification by this court. If indeed the taxing officer formed the opinion that the advocate ought not to have included the item in his bill of costs, the taxing officer should have taxed off the item from the bill of costs.”*

4. The application was opposed by the client. Mr. Matwere the learned counsel for the client relied on the grounds of opposition filed on 25<sup>th</sup> June 2010. He submitted that the taxing officer acted within the jurisdiction conferred by the Advocates Remuneration Order and properly directed himself to strike the entire Advocates Clients bill of costs. The provision of Section 69(3) are coached in mandatory terms and the court cannot allow a deviation from it. Counsel urged the court to dismiss the application.

5. The issue raised in this reference is whether the taxing officer erred in principle when he struck out the entire bill of costs on the grounds that Item No. 44 offending the provisions of Section 69(3) of the Advocates Remuneration Order which provides:-

*“Fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer.”*

6. I am also aware of the principles to bring to bear when dealing with a reference on the decision by the taxing master. Those principles are well settled in a long line of authorities by the Court of Appeal and also the High Court. The High Court is not entitled to upset a taxation merely because in the court’s opinion the amount awarded is high unless the decision of the taxing officer was based on an error of principle or the fees awarded is manifestly excessive. See the case of Thomas James Arthur v Nyeri Electricity undertaking (1961) E.A. page 492 where the Supreme Court held:

*“Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matter with which the taxing officers are particularly fitted to deal and the court will intervene only in exceptional cases”*

7. I have read the provisions of the above paragraph 69(3). In my opinion the taxing master erred in principle by striking the entire bill of costs. There is no provision that the inclusion of item No. 44 vitiates the entire bill of costs. That offending item alone should have been the one that was to be struck out. I agree with the submissions by counsel for the applicant, that was a flimsy ground which should not have led to the drastic action of striking the entire bill of costs as filed by the applicant. Accordingly the application by the advocate dated 13<sup>th</sup> June 2010 is allowed. The order by the Taxing Officer delivered on 17<sup>th</sup> February 2010 is hereby set aside. The bill of costs dated 20<sup>th</sup> July 2006 be submitted for taxation before another taxing officer other than Mr. S.A. Okato the Deputy Registrar. The advocate shall have the costs of this application.

**RULING READ AND SIGNED ON 30<sup>TH</sup> JULY 2010 AT NAIROBI.**

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