



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL APPEAL NO. 33 OF 1999**

GEOFFREY MATOKE .....APPELLANT/RESPONDENT

-VERSUS-

1. MORAA MASARE

2. JEMIMA MASARE

3. BWARI MASARE .....RESPONDENTS/APPLICANTS

**RULING**

Before me is a chamber summons application dated 24<sup>th</sup> November, 2008 and filed in court on the even date. It seeks that this court be pleased to review, revise, adjust and or reduce the amount contained in the certificate of costs issued on the 9<sup>th</sup> September, 2008 in favour of the respondent. Secondly, that this court be pleased to award the respondent such costs as accords with the advocate's remuneration order. Thirdly, that, consequent upon the foregoing this court be pleased to substitute the certificate of costs dated 9<sup>th</sup> September, 2008 with a new certificate, reflecting the correct costs payable to the respondent. Finally, the applicants asked for costs of the application.

The application was expressed to be brought under rule 11 (2) of the Advocates remuneration order and all enabling provisions of law. Essentially this is a reference from the taxation of the learned taxing master of this court and is in a way an appeal.

The grounds in support of the application were that the taxation of the respondent's Bill of costs was wrought and or fraught with errors illegalities, grossly exaggerated and the amount was astronomical and excessive. The awarded costs were contrary to the applicable advocate's remuneration order, that the taxing master misapprehended and or misconceived the principles applicable in the taxation of party and party costs. Accordingly the certificate of costs was erroneous and amounts to an error in principle. On those grounds therefore the certificate of taxation ought to be revised and or adjusted.

The application was supported by an affidavit sworn by one, **Jemimah Masare**, the 3<sup>rd</sup> applicant on her own behalf and on behalf of the other applicants. What she deponed to merely helped to expound on the grounds in support of the application aforesaid. Suffice to add that the respondent filed a civil suit against the applicants being **Kisii CMCCC No. 19 of 1989** seeking various reliefs against them with regard to land parcel No. 38 Kineni ranch. That suit was heard and dismissed. The respondent successfully lodged an appeal. On appeal he was awarded 25 acres out of the said parcel of land as well as costs. On 2<sup>nd</sup> October, 2007, the respondent lodged his bill of costs for taxation. On 8<sup>th</sup> September, 2008, the bill of costs was taxed in favour of the respondent as against the applicants in the sum of Kshs. 239,130/=. Consequently a certificate of taxation and or costs in that amount was issued by the taxing master of this court. The applicants were aggrieved by the taxation aforesaid, hence they preferred this reference by way of chamber summons application.

When the application came up for hearing before me on 28<sup>th</sup> June, 2010, **Mr. Ochwang'i** for the applicants and **Mr. Bosire** for the respondent agreed to canvass the same by way of written submissions. Subsequently they both filed and exchanged written submissions which I have carefully read and considered alongside cited authorities. I have also carefully perused the application, the grounds of objection and the advocate's remuneration order then in force at the time.

Essentially, this application is a reference. The general principles to consider with regard to references in taxation are now well settled. On a reference to a judge on taxation of bill of costs, the judge would only be justified to interfere with the taxation if it is demonstrated that the bill of costs as taxed is manifestly excessive or manifestly inadequate. The judge however has no jurisdiction to entertain a reference on a question of quantum only. See **Rogan – Kemper –vs- Grosvenor (1989) KLR 362, First**

**American Bank of Kenya –vs- Shah and others (2002) 1E.A 64.** In fact in the latter case **Ringera J.** was emphatic that “...*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 taxation officer’s decision unless the decision was based on an error of principle or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.... 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....*”.

I have looked at the proceedings before the taxing master and noted that the applicant’s objected to items I, 3, 6, 8, 13, 14, 16, 17, 18, 21, 33, 39, 44 and 45. However counsel did not indicate the basis for the objection. It was upto counsel to at least lay the basis for the objection. It is not just enough to object and make a counter offer. Of specific interest in this reference is perhaps items 1, 33, 44 and 45 in the respondent’s bill of costs.

With regard to item 1, the respondent justified the amount claimed on the basis of the acreage of the parcel of land involved. It was approximately 25 acres. The value of such parcel of land in Kisii cannot be gainsaid. I also note that the applicants had counter offered Kshs. 35,000/=. However I am now surprised that the applicant have retreated somewhat and are now offering a mere Kshs. 6,000/=. However it must be appreciated that in matters of taxation, the taxing master exercises some discretion. However such discretion has to be exercised with reason, fairly, judiciously and not capriciously. As part of exercise of that discretion the taxation master will obviously look at the work involved in filing an appeal, the value of the subject matter of the appeal, the nature, importance and or complexity of the work involved e.t.c. I am convinced that the taxing master in awarding the sum of Kshs. 115,000/= to the respondent as instruction fees, he exercised his discretion properly and not capriciously. Considering the issues involved in the appeal, it cannot be said that the amount so awarded was manifestly excessive as to justify an interference by this court and or that it was based on an error of principle on the part of the taxing master. There was a basis upon which that figure was arrived at. I also note that all other issues raised in the applicants written submissions were not specifically raised and canvassed before the taxing master. As correctly submitted by counsel for the respondent, the issues raised in the applicants’ submissions were not specifically stated on the face of the application nor in the supporting affidavit, hence they are merely after thoughts.

With regard to the sum of Kshs. 38,330 being getting up fees and being item no. 33 of the bill of costs, the respondent conceded that the same was not chargeable. Indeed that item was struck out by consent of the parties. However in his ruling on the taxation the taxing master awarded the amount to the respondent. I do not think that the learned taxing master had jurisdiction to award the same. Consequently, the award pertaining to getting up fees, constituted an error of principle. With regard to items 44 and 45 of the bill of costs, I note that the learned taxing master failed to discern the duplicity of the items.

Apart from the foregoing items I do not discern any error on the part of the taxing master in the manner he dealt with the other items in the bill of costs. Accordingly I allow the reference in part. The sum taxed and awarded as aforesaid is reduced by Kshs. 38,330/= being the getting up fees which parties agreed was not chargeable and Kshs. 7,200/= for attending court for hearing of the application for a full day which was a duplicity. Accordingly a fresh certificate of costs shall issue in the sum of Kshs. 193,600/=

As for costs of the reference, each party shall bear their and his own costs.

**Ruling dated, signed and delivered** at Kisii this 16<sup>th</sup> September, 2010.

**ASIKE-MAKHANDIA**  
**JUDGE**