



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION – MILIMANI**

**Misc Civil Case 469 of 2004**

**MAMICHA & COMPANY ADVOCATES:..... PLAINTIFF**

**VERSUS**

**KENYA KNITTING & WEAVING MILLS LTD :.....DEFENDANT**

**RULING**

This is a reference from an order on taxation made by the Taxing Officer on 2nd September, 2004 with respect to the Advocate/client Bill of Costs lodged in Court on 25th June 2004.

The reasons for the reference are in the Chamber Summons dated 31st May 2005 and in the Supporting Affidavit of Rajesh Joshi, the director of the client sworn on the same date. The main complaints are two:-

**(a) That the Taxing Officer erred in principle in awarding a sum of Kshs 665,296/= as instruction fees whereas the suit has not been determined.**

**(b) That the sum taxed in items Nos. 1,2 and 3 and awarded is excessive.**

The reference is opposed even though no replying affidavit or Grounds of Opposition were filed on behalf of the Advocates.

The reference was canvassed before me on 8th July, 2005 by Mr. Nyakundi, Learned Counsel for the client and Mr. Mungai, Learned Counsel for the Advocates. Counsel for the client substantiated the said grounds in his oral submissions before me. His main concern was that the Advocate was not entitled to full instructions fees on the basis that the suit is still pending and another firm of Advocates has been appointed to continue with the suit. In Counsel's view the fact that the new Advocates would be entitled to instructions fees too should have been considered by the Taxing Officer and allowed a smaller sum than the figure she allowed. Counsel further argued that the Taxing Officer should not have awarded the sum of Kshs 100,000/= under item 2 as the matter was not complex. As regards item 3 Counsel submitted that a decision on items 1 and 2 would resolve the complaint made against item 3.

Responding to the submissions made on behalf of the client, Counsel for the Advocate argued that there was no error of principle made by the Taxing Officer and the amount awarded by her was not excessive. In his view the reference is merely challenging the quantum and such a challenge cannot be the basis of a reference. Reliance was placed upon a decision of my Learned Brother Ochieng J. in **MAMICHA & CO. ADVOCATES –V- MOTEX KNITWEAR MILLS LTD: MISC. APPL. NO.426 OF 2004 (UR)** in which the Learned Judge agreed with Kuloba J. (Judicial hints on Civil Procedure) that the Taxing Officer is supreme in matters of Taxation unless there is an error of principle.

I have now considered the reference, the rival submissions the affidavit filed and the record. Having done so, I take the following view of the matter. Taxation can only be interfered with by the High Court under the provisions of sub-paragraph (2) of paragraph 11 of the Advocates Remuneration Order if either an error of principle is involved or the award is manifestly excessive. The basis of the Taxing Officer's decision is clear from her reasons for Taxation. She appreciated that the matter is not finalized and that the interest of the client was high and further that the matter was not complex and did not involve voluminous documentation even though sensitive. She also took into account the fact that the Advocate had had the case for six years making 22 appearances. She considered that there were other claims of

general damages besides the special damages pleaded of 34,019,780/=. After considering all the above matters the Taxing Officer awarded Kshs 565,296/= as instructions fees. She then added the figure of Kshs 100,000/= after considering the Counter-claim.

In my view the Taxing Officer took into account all the relevant factors including the fact that the suit is still pending. She did not arrive at the sums complained of in perfunctory manner. In the premises, I have come to the conclusion that no error of principle has been shown on the part of the Taxing Officer. I also do not find the sums awarded so excessive as to warrant interference. In **Joreth Limited –v- Kigano & Associates Nairobi C.A. No.66 of 1999 (UR)** the Advocate/Respondent had argued that Instructions fees is an independent and static item, is charged once only and is not affected or determined by the stage the suit has reached. The Learned Judges of Appeal in the said matter seemed to agree with the Advocate/Respondent in principle. It would therefore appear that the Learned Taxing Officer in the reference at hand has the support from the Highest Court in the land.

In the result the reference is dismissed with costs to the Respondent/Advocates. Orders accordingly. Mamicha & Company Advocates v Kenya Knitting & Weaving Mills Ltd [2005]

**DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY 2005.**

**F. AZANGALALA**

**JUDGE**