



Ramji & 2 others v Kenya Power & Lighting Company Limited (Environment & Land Case 109 'B' of 2015) [2024] KEELC 13637 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13637 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 109 'B' OF 2015
CA OCHIENG, J
DECEMBER 5, 2024**

BETWEEN

HARISH RAMJI 1ST PLAINTIFF

BHARAT RAMJI 2ND PLAINTIFF

ASHVIN RAMJI 3RD PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LIMITED DEFENDANT

RULING

1. What is before Court for determination is the Plaintiffs'/Applicants' Chamber Summons Application dated the 17th June, 2024, where they seek the following Orders:-
 - a. That this Honourable Court be pleased to set aside and/or review the Ruling of the Deputy Registrar/Taxing Master made on March 20th, 2024 taxing the Party & Party Bill of Costs at Kshs. 10,743,956.7.
 - b. That this Honourable Court be pleased to refer back the Bill of Costs to the Deputy Registrar for taxation in accordance with the law.
 - c. That costs of this Application
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Harish Ramji where he deposes that on 20th March, 2024, the Deputy Registrar (Taxing Master) delivered a Ruling on the Defendant's Party & Party Bill of Costs whereof the Bill was taxed at Kshs. 10,743,956.7. He contends that they are aggrieved with the decision of the Taxing Master as she misapprehended and misapplied the law including principles of taxation in the nature of the suit arising to the taxation. Further, that she failed to correctly apply the applicable principles and formula provided for in Schedule VI of the Advocates (Remuneration) Order 2014. He argues that the Taxing Master arrived at



an erroneous decision as the amount awarded to the Defendant is excessively high and would amount to an unjust enrichment. Further, that the Taxing Master grossly violated the principle of fair value upon work and responsibility involved in the matter, which is a significant error.

3. The Defendant opposed the instant Application by filing a Replying Affidavit sworn by Fredrick Otieno Okeyo who is an Advocate in conduct of the matter on its behalf. He deposes that the Application is devoid of merit and is not sustainable as the Taxing Master used the value of the subject matter to determine the fees that is now being challenged by the Applicants. He argues that the Taxing Master is allowed to enhance instruction fees given the nature and importance of the subject matter to the parties. He insists that the Supporting Affidavit of Harish Ramji has failed to demonstrate how the Taxing Master misapprehended and misapplied the law in the taxation of the subject Bill of Costs. Further, the deponent has failed to plead and put on record the instances in the Ruling in which they are aggrieved, thereby rendering the averments mere allegations. He reiterates that the Taxing Master used her discretion judiciously and correctly and applied her mind properly to the relevant matters necessary in the suit in the taxation of costs being challenged.
4. The application was canvassed by way of written submissions, although it is only the Defendant/ Respondent that filed its submissions.

Analysis and Determination

5. Upon consideration of the instant Chamber Summons Application including the respective affidavits and Defendant/Respondent's written submissions, the only issue for determination is whether the Taxing Master's decision delivered on 20th March, 2024, taxing the Defendant's Party & Party Bill of Costs at Kshs. 10,743, 956.7 should be set aside.
6. The Applicants have claimed that the Taxing Master erred in taxing the Bill of Costs but did not highlight, which portions of the said taxed Bill they are disputing. The only issue they raised is that the Taxing Master erred by failing to apply the principles in Schedule VI of the Advocates (Remuneration) Order, 2014.
7. Schedule VI of the Advocates (Remuneration) Order 2014 makes provisions on awarding of instruction fees and states thus:-

“The fees for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it—(a) To sue in any proceedings (whether commenced by plaint, petition, originating summons or notice of motion) in which no defense or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties and (b) To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties...”
8. In the current scenario, the Applicants' main contention is the Taxing Master's failure to adhere to principles applicable in Schedule VI of the Advocates Remuneration Order. They have not stated why they are aggrieved on how the Taxing Master applied the said Schedule to tax the Bill of Costs. Be that as it may, I note the Taxing Master relied on the valuation report to determine the value of the suit property and made a slight increase to the awarded instruction fees.



9. In the case of *Joreth Limited V Kigano & Associates* [2002] eKLR the court held inter alia:-
- “We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”
10. While in the case of *Republic v Ministry of Agriculture and 2 others: Exparte Muchiri W’Njuguna & others* (2006) eKLR it was held as follows:-
- “The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant facts.”
11. Further, in the case of *First American Bank of Kenya v Shah & others* [2002] E.A.L.R. 64, as cited in *Lubelellah & Associates Advocates v Baranyi Brokers limited & 2 others* [2014] eKLR, it was stated that:-
- “First, I find that on the authorities, this court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either 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.”
12. Yet in the case of *Violet Ombaka Otieno & 12 others v Moi University* [2021] eKLR, the Judge held that:-
- “In determining the second issue as to whether the taxing officer exercised her discretion judiciously, the starting point is to identify the legal parameters within which this Court can interfere with a taxing officer’s discretion. In the case of *Premchand Raichand Ltd v Quarry Services of East Africa Ltd* [1972] E.A. 162 it was held that: “The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”
13. Based on the facts as presented while associating myself with the quoted decisions, I find that the Applicants have failed to demonstrate with precision on how the Taxing Master misapprehended and misapplied the law including principles of taxation in the nature of the suit arising to the taxation. Further, they have failed to correctly indicate how she failed to apply the applicable principles and formula provided for in Schedule VI of the Advocates (Remuneration) Order 2014. I opine that since Paragraph 11 of the Advocates Remuneration Order provides that a party aggrieved with the Taxing Master’s decision and intends to file a reference has to highlight the items of taxation, he/she objects



to, it then follows that the Applicants should have highlighted the taxed items they are objecting to, in the instant application including the supporting affidavit, which they failed to do.

14. In the circumstances, I find that the Taxing Master did not err in principle by taxing the Bill of Costs as she did as it was based on her discretion and she had powers to do so.
15. I will hence proceed to uphold the determination of the Taxing Master as regards the taxation of the Defendant's Bill of Costs dated the 9th February, 2023.
16. It is against the foregoing that I find the Plaintiffs'/Applicants' Chamber Summons Application dated the 17th June, 2024 unmerited and will proceed to dismiss it with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 5TH DAY OF DECEMBER, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Okeyo for Respondent

No appearance for Applicant

Court Assistant - Simon

