



Goldfield Insurance Brokers Limited v First Assurance Company Limited (Miscellaneous Reference Application E203 of 2023) [2025] KEHC 528 (KLR) (Civ) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 528 (KLR)

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

MISCELLANEOUS REFERENCE APPLICATION E203 OF 2023

RC RUTTO, J

JANUARY 17, 2025

BETWEEN

GOLDFIELD INSURANCE BROKERS LIMITED APPLICANT

AND

FIRST ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The appellant, being aggrieved by the Ruling of the Taxing Master delivered on 21st November 2023, has filed this Reference by way of a Chamber Summon dated 4th December 2023 seeking the following reliefs;
 - i. Spent
 - ii. That the decision of the taxing officer, Hon. Osoro, Deputy Registrar in the Ruling delivered on 21st November 2023 in HC Misc. Application No. E203 of 2023, with respect to item 1 in the Bill of Costs dated 12th July 2023 be set aside and taxed afresh by this Honourable court.
 - iii. That in the alternative, this Honourable court be pleased to order that the Respondent's Bill of Costs with respect to Item 1 be taxed afresh by another taxing officer.
 - iv. That this Honourable court be pleased to give orders or directions hereof that it may deem fit to give hereof.
 - v. That the costs of this application be paid by the Respondents in any event.
2. The Application is based on grounds on the face of it and the replying affidavit of Joseph Kailutha Anampiu, the Chief Executive Officer of the Applicant, sworn on 4th December 2023.



3. The applicant contends that the award of Kshs. 718,022.48/= by the taxing master was excessive and outrageous as the Application for contempt, which was the basis of the costs, had been withdrawn.
4. Consequently, the applicant is aggrieved by the award on Item 1 of the Bill of Costs dated 12th July 2023. Vide its submissions dated 4th March 2024, the applicant submitted that the taxing master misdirected himself on the instruction fees by applying a figure of Kshs. 27,644,221/= to arrive at Kshs. 614,663/=. The applicant contends, that the figure was not justified as the Application was merely for contempt of court and was withdrawn by mutual agreement. That the Respondent was only entitled to throw away costs of Kshs. 50,000/=. In support of this position, the Applicant relies on the case of *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No. 3)* [1972] E.A. 162.
5. The applicant further submits that the getting-up fees were unjustified and should be rejected entirely. It relies on the case of *Kiambu Murutani Co. Limited v Kamindi Selfridges Supermarket* [2021] eKLR, arguing that getting-up fees are charged at one-third of the instruction fees.
6. In conclusion, the applicant argues that an application is not a substantive pleading. It asserts that, where an application is withdrawn before determination on its merits, throw-away costs suffice. Accordingly, the applicant prays that this Court sets aside the impugned decision and orders fresh taxation before a different Taxing Master.
7. In opposition to the Chamber Summons Application, the respondent filed Grounds of Objection dated 11th December 2023 and submissions dated 26th July 2024. The respondent delimited the following issues in its submissions: whether the Taxing Master taxed the Party and Party Bill of Costs dated 12th July 2023 fairly and reasonably, whether her ruling should be set aside, and the issue of costs.
8. The respondent submits that the Taxing Master was correct in her decision to tax the Bill of Costs at Kshs. 718,022/=. The respondent argues that the taxation of instruction fees was in accordance with the provisions of Schedule 6(1)(b) of the *Advocates Remuneration Order*, as the value of the subject matter was ascertainable from the pleadings as Kshs. 27,644,221/=. It further submits that the Taxing Master was justified in awarding 75% of the instruction fees, given that the matter was determined summarily without proceeding to a full trial.
9. On the issue of getting-up fees, the respondent submits that the amount awarded was justified and in accordance with Paragraph 2 of Schedule 6 of the *Advocates Remuneration Order*. It relies on the following cases to support its position: *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board*, NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR; *First American Bank of Kenya v Shah and Others* [2002] 1 E.A. 64; *Mwakio, Kirwa & Company Advocates v County Public Service Board Bomet & Another* [2002] eKLR; and *Republic v Ministry of Agriculture & 20 Others ex-parte Muchiri W' Njuguna* [2006] eKLR.
10. The respondent submits and prays that this Court upholds the ruling issued on 21st November 2023 and refrains from interfering with the decision as no sufficient grounds have been demonstrated to warrant such interference.

Analysis & Determination

11. I have read and carefully considered the affidavits and material before the taxing officer together with the written submissions by the respective parties to this Reference application. In my view, the issues for determination are as follows:
 - i. Whether this Court should interfere with the discretion of the taxing Master.



- ii. Whether the Taxing Master erred in principle in the assessment of the instruction fees and getting up fees and therefore the same should be re-assessed
 - iii. Who pays the costs of this reference.
12. On the first issue as to whether this court should interfere with the discretion of taxing master, I am guided by the decision of the Court of Appeal in the case of *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* (2005) eKLR where the Court of Appeal made the following observations;
- On reference to a judge from the Taxation by a Taxing Officer, the Judge will not normally interfere with the exercise of the discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.
13. The issue in contest here is with respect to the subject matter for purposes of the instruction fees. The applicant contends that the taxing master erred in finding that the subject matter was determinable from the pleadings filed yet the Application giving rise to the costs was merely for contempt of court, which was withdrawn by mutual agreement. On the other hand, the respondent argues that the taxation of instruction fees was in accordance with the provisions of Schedule 6(1)(b) of the *Advocates Remuneration Order*, as the value of the subject matter was ascertainable from the pleadings at Kshs. 27,644,221/=.
14. This court notes that the on 19th June 2023, the respondent was awarded costs. The facts leading to the award of costs are that the applicant herein filed a notice of withdrawal of application dated 16th June 2023 seeking leave of the court to withdraw its Notice of Motion dated 10th March 2023 with no orders as to costs. However, the court allowed the application with costs. This led the respondent to file its party-to-party bill of costs in which he sought instructions fees to defend contempt proceedings involving disputed payable commission of Kshs. 27,644,221/= charged under schedule 6 of the *Advocates Remuneration Order, 2024*.
15. In its ruling the taxing master was guided by Schedule 6 (1) b of the *Advocates Remuneration Order*. The provision under Schedule 6 of the *Advocates Remuneration Order* (costs of proceedings in the High Court), is made on charging instructions fee both for suits whose value can be determined from the pleadings.
16. Notably, in this instance this court notes that the taxing master failed to appreciate the nature of the brief to which an award of costs was granted. This court notes that the crux of the matter was an application for contempt proceedings. That is the Application, the respondent herein defended. I find that was not a suit that would normally benefit from the provisions of Schedule 6 (1) (b) of the *Advocates (Remuneration) (Amendment) Order*. The taxing master ought to have considered that the costs awarded were only limited to the application for contempt proceedings that was withdrawn and not the entire suit.
17. In *Onyango vs Tribe Hotel Limited* (Civil Appeal) (Application No 282 of 2017) [2024] KECA 1749 (KLR) (6 December 2024) the Court of Appeal held
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- “ 26. It is evident from the application that the instruction fees sought in the bill of costs was based on the subject matter in the main suit before the trial court. However, the matter before this Court on appeal was on the contempt of court ruling, not the subject matter of the main suit...
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28. In this case, the appeal was not based on any specific amount of money and it was not opposed. The taxing officer ought to have exercised her discretion in awarding the instruction fees, and not relied on the amount in the main suit.
 29. By failing to identify the correct subject matter in the taxation, the taxing officer fell into an error of principle. Similarly, assigning an incorrect value to the subject matter also represented an error of principle. In the case of *Arthur vs Nyeri Electricity* [1961] EA 492 the court held that: “Where there has been an error in principle, the Court will interfere, but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the Court will intervene only in exceptional cases.”
 30. I find that this is an exceptional case as the taxing officer considered the substantive issue in the main suit rather than the interlocutory appeal against a ruling on contempt of court. Therefore, the basis of the award was wrong.”
18. Consequently, guided by the above authority, I find that the taxing master fell into error in assessing instruction fees as he so did. He proceeded on a misapprehension of the matter/suit that formed the basis of the taxation application. Consequently, I find that the respondent was entitled to fees as delineated in Schedule 6 under the title “other matters”. Since the application was defended, I find that the respondent was entitled to instruction fees in the sum of Kshs. 75,000.00. There is no compelling reason why the same ought to be enhanced to any figure above that. I therefore find that the instruction fees ought to be revised to the sum of Kshs. 75,000.00.
 19. Regarding getting up fees, since the application was withdrawn and never proceeded for hearing I find that the respondent was not entitled to getting up fees and will therefore tax off that sum that was awarded. The other items in the bill were not contested. Be that as it may, I find that the same were drawn to scale.
 20. Based on the foregoing, it is evident that the applicant has demonstrated that the Taxing Master applied the wrong principles. On this ground, the Court finds justification to interfere with the Taxing Master's discretion. Consequently, the reference succeeds as follows:
 - a. The instruction fees are hereby awarded in the sum of Kshs. 75,000.00.
 - b. The award on getting up fees is disallowed and taxed off.
 - c. The other items in the bill are allowed as taxed by the taxing master.
 - d. Each party shall bear its own costs of the reference.

Orders accordingly

DELIVERED, DATED AND SIGNED THIS 17TH DAY OF JANUARY 2025

RHODA RUTTO

JUDGE

For Applicant

For Respondent

Court Assistant

