



REPUBLIC OF KENYA



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Akide and Company Advocates v Independent Electoral and Boundaries Commission (IEBC) (Civil Miscellaneous Application E156 of 2024) [2025] KEHC 2470 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL MISCELLANEOUS APPLICATION E156 OF 2024
DO CHEPKWONY, J
FEBRUARY 6, 2025**

BETWEEN

AKIDE AND COMPANY ADVOCATES APPLICANT

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(IEBC) RESPONDENT**

RULING

1. This is a ruling in the determination of the Chamber Summons application dated 27th June, 2024 seeking the following orders:-
 - a. The decision of Hon. Deputy Registrar S. K. Arome delivered on 13th June, 2024 and reasons thereof uploaded on the portal on the same date, be set aside and the Applicant's Bill of Costs dated 3rd August, 2022 be taxed afresh.
 - b. In referring the Bill of Costs to be taxed afresh, this Honourable Court to issue appropriate directions.
 - c. That the costs of this application be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Godfrey Munene Mberia sworn on the instant date. It is the Applicant's case that it was aggrieved by the Ruling of the Taxing Master whereby he erred in law and fact by using Schedule 6 Part A which provides for instruction fees for presenting or opposing Election Petition at Kshs.90,000/= plus 50% for Advocate Client costs of Kshs.45,000/= giving a total of Kshs.135,000/= instead of using the same Schedule 6 but Part B, which gives the instruction fees as Kshs.500,000/= plus 50% to be make it Kshs.750,000/=.
3. The Applicant also faulted the Taxing Master for failing to appreciate that the Respondent did not oppose the instruction fees, for holding that Items 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21,



- 22 and 23 are not provided for under Advocates Remuneration Order yet they are under Schedule 6. The Applicant blamed the Taxing Master for ruling on Items 25, 26, 27 and 28 which were not listed in the Bill of Costs, hence she disregarded the Applicant's submissions and authorities without giving any reasons. Therefore, it is the Applicant's contention that the Ruling of the Taxing Master needs to be set aside and the Bill of Costs be taxed afresh. The Applicant prays that the Reference be allowed as prayed.
4. The Application was opposed through the Replying Affidavit of Chrispine Owiye, the Director of Legal Services for the Respondent, sworn on 14th October, 2024. According to the deponent, the Applicant in the Bill of Costs sought an exorbitant figure of Kshs.580,000/= and the Respondent filed submissions challenging the same. He asks that the Taxing Master correctly applied Schedule 6 Part B and taxed the same at Kshs.135,000/=. He further taxed off the items not provided for under the Advocates Remuneration Order.
 5. It is the Respondent's submission that the Taxing Master applied the principles of taxation and the Ruling was justified and this court can only interfere if there is a clear error of principle or where the sum awarded is manifestly too high or too low to amount to an injustice. But in this case, the deponent holds that the amount awarded was fair and just. He further holds that the Taxing Master has unfettered discretion to increase or lower instruction fees and by doing so, it cannot be deemed as error in principle. He therefore urges that the Reference is unmerited and should be dismissed with costs.
 6. Pursuant to court's directions issued on 3rd October, 2024, the Reference was canvassed by way of written submissions. In the Applicant's submissions dated 25th October, 2024 it listed the following issues for determination:-
 - a. Whether this Honourable Court can interfere with the Taxing Officer's decision on the Bill of Costs.
 - b. Whether the Deputy Registrar erred in law and fact by noting that Schedule 6 Part A Paragraph (i) of the Advocates (Remuneration Amendment) Order, 2014 provides that the instruction fees for presenting or opposing an Election Petition is taxed at Kshs.90,000/ and being an Advocate-Client cost an additional one half percent amounting to Kshs.45,000/= bringing the total to Kshs.135,000/=.
 - c. Whether Items 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22 and 23 are provided for in the Advocates (Remuneration) Amendment Order 2014.
 - d. Whether the decision by Hon Deputy Registrar delivered on 13th June, 2024 should be set aside and the Bill of costs taxed afresh.
 - e. Who should bear the costs of this suit.
 7. The Respondent in the submissions dated 18th December, 2024 raised two issues for determination, being:-
 - a. Whether sufficient grounds have been laid out to warrant the setting aside of the decision of the Taxing Officer.
 - b. Who should bear the costs of this application.
 8. I have carefully read through the application (Reference), Supporting Affidavit and Replying Affidavit alongside the written submissions and cited authorities filed by the parties herein and find the main issue for determination is whether the Deputy Registrar erred in arriving at the decision he did to



warrant any interference. This court is guided by the principle in the established case of Mbogo & Another –vs- Shah [1968] EA, P.15 where it was held that:-

“An appellate court will not interfere with the exercise of the trial court’s discretion unless it is satisfied that the court in exercising its discretion misdirected itself in some matters and as a result arrived at a decision that was erroneous, or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of judicial discretion and that as a result there has been misjustice.”

9. This principle was also adopted in the case of Kipkorir, Tito & Kiara Advocates –vs- Deposit Protection Fund Board [2005] eKLR, where the Court observed that:-

“On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”

10. Based on these principles as set out in the aforementioned cases, this court has to examine whether the Deputy Registrar erred in the assessment and computation of the instruction fees and other items as claimed by the Applicant.

11. In this case, being an election matter, the appropriate schedule that ought to have been used is Schedule 6, Paragraph 1 (i) of the Advocates (Remuneration) amendment Order 2014, which provides for instruction fees of Kshs.500,000/=. Therefore, this being the case, the amount of Kshs.90,000/= was manifestly too low hence the Taxing Master applied wrong principles of law in arriving at this figure. For this reason, the Ruling of the Taxing Master ought to be set aside.

12. In respect to the other items listed by the Applicant listed in the Reference and submissions as being Items 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22 and 23, this Court has read through each of them and finds that they include drawing of pleadings, attending court sessions, receiving and perusing documents, correspondence and photocopying and printing as all provided for under the Advocates Remuneration Order. Therefore, the Taxing Master erred in disregarding them.

13. The court therefore finds that the Reference here-in has merit and proceed to order that:-

- a. The Ruling of the Deputy Registrar delivered on 13th June, 2024 be and is hereby set aside.
- b. The Bill of Costs dated 3rd August, 2022 is hereby referred to the Deputy Registrar, Kiambu High Court for re-taxation.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF FEBRUARY, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/S Serah counsel for the Applicant

Mr. Bogonko counsel for the Respondent

Court Assistant - Martin

