



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC MISC. CASE NO. 18 OF 2019**

**OWITI OTIENO & RAGOT ADV. ....PLAINTIFF**

**VERSUS**

**MUMIAS SUGAR CO. LTD. ....DEFENDANT**

**RULING**

The application is dated 23<sup>rd</sup> September 2020 and is brought under Rule 11 of the Advocates Remuneration Order seeking the following orders that;

1. The learned Deputy Registrar's decision dated and delivered on 24<sup>th</sup> July, 2019 by which;

(a) He taxed off item 1 of the applicant's advocate/client's Bill of Costs dated 18<sup>th</sup> March, 2019 be set aside.

(b) He taxed Ksh. 57,695,918.00 off item 2 of the applicant's Bill of Costs dated 18<sup>th</sup> March, 2019 being getting-up fees be set aside.

(c) He taxed off items 8, 12, 15, 17, 19, 22, 23, 25, 27, 30, 38, 43, 45, 47, 53, 61, 64, 66, 72, 74, 76, 81, 83, 85, 88, 98, 101, 103, 107, 109, 112, 125, 127, 129, 137, 141, 142, 146, 148, 13, 21, 77, 78, 79, 121, 122, 123, 153, 156, 157, 164, 168, 170, 173, 174, 176, 177, 185, 187, 188, 191, 192, 193, 194, 195, 198, 203, 204, 158, 159, 160, 161, 162, 171, 172, 175, 179, 180, 182, 163, 166, 189 and 167 be set aside.

2. This honourable court be pleased to direct that items 1, 2, 8, 12, 15, 17, 19, 22, 23, 25, 27, 30, 38, 43, 45, 47, 53, 61, 64, 66, 72, 74, 76, 81, 83, 85, 88, 98, 101, 103, 107, 109, 112, 125, 127, 129, 137, 141, 142, 146, 148, 13, 21, 77, 78, 79, 121, 122, 123, 153, 156, 157, 164, 168, 170, 173, 174, 176, 177, 185, 187, 188, 191, 192, 193, 194, 195, 198, 203, 204, 158, 159, 160, 161, 162, 171, 172, 175, 179, 180, 182, 163, 166, 189 and 167 be taxed as drawn.

3. This honourable court be pleased to re-tax the items the subject matter of this reference in the manner sought herein or to make such further directions as to the fresh taxation of the applicant's Bill of costs dated 18<sup>th</sup> March, 2019 as the court may be deem just and reasonable.

4. Costs of this reference be provided for.

It is supported on the grounds that the Learned Deputy Registrar made an error of principle in basing his decision on items 1 and 2 on the fact that the suit was filed in the year 2008 yet this was an advocate/client bill of costs and the evidence was clear that instructions were given to the applicant in January, 2010. The learned Deputy Registrar made an error of principle in taxing the applicant's bill of costs under Schedule 6A (1) (ii) when the applicable scale was schedule 6B of the Advocates (Remuneration) Order, 2009. The learned Deputy Registrar finding on items 1 and 2 was plainly wrong considering that the value of the subject was never in dispute. The decision of the taxing officer on these two items was not supported by the facts before the taxing officer. The learned Deputy Registrar finding that all items in the bill relating to correspondence, travelling, subsistence and costs of sending correspondent were not provided for in the Advocates Remuneration Order was bizarre to say the least and completely misguided as a matter of fact and law. The applicant relied on the proceedings before the Honourable Deputy Registrar in this cause.

This court has considered the application and the submissions therein. The procedure for the challenge of a taxing master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:

***"(1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the objects.***



**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 22<sup>ND</sup> JUNE 2021.**

**N.A. MATHEKA**

**JUDGE**