



**Kibatia & Company Advocates v China Jiangsu International (Miscellaneous Application E792 of 2021) [2024] KEHC 2300 (KLR) (Commercial and Tax) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2300 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E792 OF 2021**

**PM MULWA, J**

**MARCH 7, 2024**

**BETWEEN**

**KIBATIA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**CHINA JIANGSU INTERNATIONAL ..... RESPONDENT**

**RULING**

1. The applicant filed this reference by way of the Chamber Summons dated 12<sup>th</sup> April, 2023 under Rules 11(1) and (2) of the [Advocates Remuneration Order](#) (ARO), and sought to set aside the Taxing Officer's ruling dated 16<sup>th</sup> March 2023 in relation to item 1 in the Advocate Client Bill of Costs dated 13<sup>th</sup> October 2021. The applicant also sought the costs of the application.
2. The application is predicated on the grounds set out on its face and on the supporting affidavit of Moses Maina Karuga. The applicant claims the Taxing Master while appreciating the value and complexity of the subject matter awarded an inordinately low sum of ksh 3,000,000/- which was not commensurate with the value which is ksh 6,3999,614,100/=. That she failed to consider the work done by the applicant and the pecuniary interest under paragraph 5(2)(b) of the [ARO](#).
3. The applicant's filed submissions dated 27<sup>th</sup> September 2023 and contended that the advocate was instructed by the client vide a letter dated 26<sup>th</sup> March 2020 to urgently render professional advice and prepare an agreement for joint investment in a private business project between China Jiangsu International and Vermögenskonzepte GMBH & Company.
4. According to the applicant, the joint total value was 50,000,000 euros and the advocate embarked on examining the important documents despite the challenges of the COVID-19 pandemic that required all offices to remain closed.



5. It was further averred that considering the complexity, nature and urgency of the work done, the bill of costs on instructions fees was drawn to scale, was justifiable and not exaggerated and does not afford the applicant unjust enrichment. The advocate pleaded with the court to find the Taxing Master erred in principle in assessing the costs.
6. Counsel cited the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* (2005) eKLR, where the Court of Appeal stated:

“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 costs.”

### **Analysis and Determination**

7. I have noted that despite service of the reference, the respondent did not participate in the application. Having considered application, the supporting affidavit as well as the submissions, the issue for determination is whether the application dated 12<sup>th</sup> April 2023 is merited.
8. Rule 11 of the *ARO* makes provision for the procedure an aggrieved party must adopt, thus:
  1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
  2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
  3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
  4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days’ notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
9. The Taxing Master in her determination held that there existed a retainer between the advocate and the client and went ahead to find the sum of ksh 3,000,000 was adequate for instruction fees. The taxing master cited the relevant authorities in support of the decision and gave a reasoned ruling on the same.
10. The Advocate faults the taxing master for not considering the complexity of the work done and for taxing the Bill of Costs at an inordinately low figure.
11. Before interfering with the taxing master’s decision, the court should evaluate if the taxing officer rightly exercised her discretion in taxing of the instruction fees. To my mind, the amount taxed by the taxing officer ought to be commensurate to the work done, and no advocate ought to unjustly enrich themselves.



12. It was held in *Moronge & Company Advocates v Kenya Airports Authority* [2014] eKLR that;
- “...The advocate’s pay however must be commensurate to his work otherwise it shall be what is termed as “unjust enrichment”. The same must be a reasonable compensation for professional work done. The court shall interfere with the decision of the taxing master if the same was unreasonable and excessive in the circumstances...”
13. Item 1 of the Bill of Costs amended on 29<sup>th</sup> October 2021 is in respect of ‘receiving instructions in giving professional advice and preparing an agreement for a joint investment in a private business.’ No dispute was brought forth in court.
14. In the above cited case, it was further held that the court will only interfere with the discretion of the taxing master if it was satisfied that the taxing master applied a wrong principle or the discretion was wrongly applied.
15. In the impugned ruling, it is evident that the taxing master was cognizant of the value of the subject matter and the complexity of the issue involved. She noted in her ruling that she had factored in the work done after considering the documents presented as Annexures 1, 2 and 3.
16. I am therefore not persuaded that the taxing officer applied a wrong principle or that she wrongly applied her discretion.
17. It is my finding that the applicant has failed to demonstrate that the instant application meets the threshold for setting aside the Taxing Officer’s decision. Consequently, the Chamber Summons application dated 12<sup>th</sup> April 2023 lacks merit and is dismissed. No orders as to costs.

**RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 7<sup>TH</sup> DAY OF MARCH 2024.**

.....

**MULWA**

**JUDGE**

In the presence of:

Mr. Tumbo h/b for Mr. Karuga for the Applicant

N/A for the Respondent

Court Assistant: Carlos

