



**Muri Mwaniki & Wamiti Advocates v Draft and Develop
Engineers Ltd (Miscellaneous Application E253 of 2019)
[2024] KEHC 4516 (KLR) (Commercial and Tax) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4516 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E253 OF 2019
DO CHEPKWONY, J
MARCH 1, 2024**

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES ADVOCATE

AND

DRAFT AND DEVELOP ENGINEERS LTD CLIENT

RULING

1. For determination before this court is a Chamber Summons Application dated 1st August, 2022 under Section 11 (1) & (2) of the [Advocates Remuneration Order](#) and all other enabling provisions of the law. It seeks the following:
 - a. This Honourable Court be pleased to set aside the ruling of the Deputy Registrar Hon. E. M Nyakundi delivered on 30th June, 2022 (hereinafter Ruling) and any resultant Certificate of Taxation to the extent that it relates to the reasoning and determination pertaining to taxation of Item 1 of the Advocates/Client Bill of costs dated 26th June, 2019.
 - b. This Honourable court be pleased to tax Item No. 1 of Bill of Costs dated 26th June, 2019.
 - c. In the alternative to prayer No.2 above, this Honourable court do remit the Item No. 1 of the Bill of Costs dated 26th June, 2019 to another Taxing Officer for taxation with directions on the taxation.
 - d. That the Advocate/Applicant be awarded costs of this application.
2. The Application is based on the grounds set out on its face and the Supporting Affidavit of Martin G. Mwaniki sworn on 1st August, 2022 wherein the Applicant has averred that the Taxing Officer erred in law in taxing Item No. 1 relating to instruction fees at Kshs 100,000/= by failing to take into



consideration the importance of the cause, the amount involved, the interest of the parties and the general conduct of the proceedings.

3. The Applicant holds that the nature of the proceedings are in respect of a contract for Kshs. 824,457,120.49 and that it involved a technical matter which dealt with a construction agreement which was settled in arbitration for the sum of Kshs 534,464,310.56 . He also holds that being construction of Umaa Dam, the matter is of public interest. He further contends that the suit involved drawing, receiving and perusing voluminous documents and therefore the award of Kshs. 100,000/= was very low and erroneous.
4. The Respondent has not filed any response to the application. However, after delivery of the Ruling of 30th June, 2022, the Applicant gave Notice of Objection dated 6th July, 2022 which was within the 7 days timeframe.

Analysis and Determination

5. To determine the application dated 1st august, 2022, I have considered the grounds upon which it is premised as set out on its face and Supporting Affidavit alongside the Grounds of Opposition. I find the issue for determination being whether the application is meritable?
6. It is trite law that this Court can only interfere with the discretion of the Taxing Officer where there is a demonstrated error in principle. In the case of *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the court was categorical 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.”
7. In the case of *First American Bank Ltd v Shah and Another* [2002] 1 EA 64, Ringera J, (as he then was), the court similarly stated as follows:-

“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... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors... some of the relevant factors include the nature and importance of the cause or matter, the amount or value of this subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial jJudge...not all the above factors may exist in any given case and it is therefore open to the Taxing Officer to consider only such factors as may exist in the actual case before him...”
8. This court has analysed the bundle of documents filed in support of the Bill of Costs, and more particularly the Plaintiff filed in the suit being HCOMM. No. 11 of 2011, *Draft and Develop Engineers Limited v National Water Conservation and Pipeline Corporation* and established that the contract in dispute was for a price of Kshs. 824,457,120.49. It is also noted that this matter has been pending before court for more than twelve (12) years.
9. Having read through the Ruling of the Taxing Officer, I find that she stated that the applications and the Record of Appeal did not illustrate the value of the subject matter since the application that was seeking enlargement of time was dismissed but not on merit. This is what led to the bill being taxed at Kshs. 100,000/= as instruction fees based on her discretion.



10. It is worth noting that an advocate's fees are charged depending on the value of the subject matter as indicated in the documents filed in court or as determined by the court in its final judgment in a litigation. It includes instruction fees which is based on the value of the subject matter, fees for getting up and preparing for trial which is a quarter of the instructions fees, a fee for preparing of documents which is chargeable per page, a fee for perusing correspondences which is also chargeable per page, a fee for preparing of applications in a suit, a fee for attending to any phone calls etc. All these are regulated by the [Advocates Remuneration Order](#), contained in the [Advocates Act](#) and lays out the rules to be followed by advocates when raising fee and also to be used to determine the fees payable.
11. In view of this, coupled with the pleadings on record and period the suit has been in pendency before court, this court finds that the Deputy Registrar in awarding a sum of Kshs.100,000/= as instruction fee based the same on a wrong principle of law. The award is manifestly too low in the circumstances of this case.
12. The court then proceeds to set aside the Taxing Master's ruling delivered on 30th June, 2022 in terms of Item No.1 and directs that the Bill of Costs dated 26th June, 2019 be remitted back to another Deputy Registrar for taxation of the said Item No.1.
13. The Applicant is hereby awarded costs of this application.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 15TH DAY OF FEBRUARY , 2024.

D. O. CHEPKWONY

JUDGE

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF MARCH , 2024.

ALFRED MABEYA

JUDGE

