



Mutai t/a Mutai Kipkemoi Advocates v Cheruiyot (Miscellaneous Reference Application E065 of 2023) [2024] KEHC 5879 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS REFERENCE APPLICATION E065 OF 2023**

JK SERGON, J

MAY 23, 2024

BETWEEN

**JOSHUA KIPKEMOI MUTAI T/A MUTAI KIPKEMOI
ADVOCATES APPLICANT**

AND

WILSON KIPLANGAT CHERUIYOT' RESPONDENT

RULING

1. The application coming up for this court's determination is a notice of motion dated 7th December, 2023 seeking the following orders;
 - (i) That the decision of the taxing officer as evidenced in the ruling delivered on 22nd day of November, 2023 with respect to item 1 in the bill of costs dated 25th April, 2023 be set aside and taxed afresh by this Honourable Court
 - (ii) That in the alternative, the Honourable Court be pleased to order that the applicant bill of costs with respect to items 1 be taxed afresh by another taxing master.
 - (iii) Costs of the application be provided
2. The application is supported by grounds on the face of it and the supporting affidavit sworn by JOSHUA KIPKEMOI MUTAI the applicant herein an Advocate of the High Court of Kenya practicing as such in the name of M/S Mutai Kipkemoi Advocates who are in conduct of this matter hence competent to swear the affidavit.
3. The applicant avers that he represented the respondent in the matter having received instructions from him to file summons for revocation or annulment of grant against confirmation of grant in respect to their estate in the High Court Succession Cause no. 220 of 2014 and attached a notice of appointment to that effect.



4. The applicant avers that the matter proceeded well and the same was finally settled and marked as closed on 13th March, 2023 and a certificate for confirmation of grant was duly issued.
5. The applicant avers that the respondent stopped paying his legal fees as agreed and this prompted him to file his advocate-client bill of costs dated 25th April, 2023 and the same was taxed and allowed at a total of Kshs. 138, 048/= which figure is too low for an advocate who had represented the applicant to file for an objection to an estate worth over Kshs. 120,000,000/=.
6. The applicant avers that the taxing master when delivering her ruling awarded Kshs. 50,000/= as instruction fees in total inconsideration of the factors such as the value of the estate before awarding the same.
7. The applicant avers that on the face of the advocate-client bill of costs, he stated the value of the property and further suggested instruction fees as provided under schedule 10 part A(1) (f) of the [Advocates \(Remuneration\) Amendment Order, 2014](#).
8. The applicant avers that he is aware that the award of costs is discretionary and that the taxing master ought to exercise the discretion judicially.
9. The applicant avers that it is imperative that this Court do reverse and set aside the decision of the taxing master issued on 22nd November, 2023 in Miscellaneous Cause No. E027 of 2023 and proceed to tax afresh the said bill of costs in accordance with the provisions of the law in respect of item 1.
10. The applicant reiterated that the general level of remuneration of advocates must be such as to attract recruits to the profession and also the amount awarded as instruction fees should be an amount that reflects with appreciation the value and skills which the advocate employed in preparing the summons for revocation and/or annulment of grant.
11. In opposition to the instant application, the respondent filed grounds of opposition as follows;
 - (i) The application as filed under section 1A, 3B & 3A of the [Civil Procedure Act](#) and Order 51 of the [Civil Procedure Rules](#) is incurably defective, incompetent and the same ought to be filed under rule 11 of the [Advocates Act](#).
 - (ii) The applicant failed to file the reference within fourteen (14) days from the date of the taxing masters decision delivered o 22nd November, 2023 as provided by rule 11 of the Advocates Remuneration Order and the applicant filed this application on 7th December, 2023, 2 days late and without seeking leave of the court for enlargement of time.
 - (iii) The taxing master took into consideration all matters before her including the respondent's instruction to the applicant was limited to filing summons for revocation of grant and not to represent the estate in taxing the applicant bill of costs.
 - (iv) The applicant has not demonstrated any sufficient grounds to impugn the exercise of judicial discretion on the part of the taxing officer warranting the reference.
 - (v) The applicant has not disclosed the error of principle and fact and/or relevant facts that were disregarded by the taxing master.
 - (vi) As to the instruction fees the fees awarded by the taxing officer, it was commensurate to the nature of work the applicant was instructed to do and the fees chargeable is provided under schedule 10 (1) (f) of the Advocates Remuneration, 2014, however, the taxing master in exercising her discretion, increased the fee from Kshs. 10,000/= as provided to Kshs. 50,000/=.



12. The court directed the parties to file written submissions. At the time of writing this ruling the parties had not complied. I have considered the pleadings by the parties and I hereby find that the sole issue for determination is whether to set aside the taxing masters ruling delivered on 22nd day of November, 2023 with respect to item 1 in the advocate client bill of costs dated 25th April, 2023 and order that the same be taxed a fresh.
13. I find that the answer is the negative. The advocate was merely instructed to file summons for revocation and/or annulment of grant against confirmation of grant in respect to the estate of the deceased in the High Court Succession Cause No. 220 of 2014.
14. Schedule 10 of the The *Advocates (Remuneration) (Amendment) Order*, 2014 part A 1 (f) provides that; to lodge an objection to grant, or a citation or other application or proceedings under the law not otherwise provided for in this schedule; the taxing officer shall award a reasonable sum, but not less than Kshs 10,000/=. Whereas as part B provides that in an advocate client bill of costs, the fees prescribed in part A in a contested matter under the law as between an advocate and client, shall be increased by 50%. In the contested bill of costs, the taxing master exercised her discretion and awarded a sum of Kshs. 50,000/= which is reasonable in the circumstances of this case whereby the respondent's instruction to the applicant was limited to lodging an objection to grant by filing summons for revocation and/or annulment of grant. This court finds that there was no error in principle or that the taxing master exercised her discretion capriciously or whimsically. Courts will not interfere with an award of quantum by the taxing officer, unless there was an error in principle or the discretion was improperly exercised, resulting in injustice. The Court in the case of *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR 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."
15. The respondent filed a grounds of objections in response to the instant reference, the respondent raises a pertinent point to wit the fact that the applicant did not comply with the procedure and timelines set out in Rule 11 of the *Advocates Remuneration Order*, 2009 which makes provision for the procedure an aggrieved party must adopt prior to filing a reference. It provides:
 - (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.
16. The above provision of law is coached in mandatory terms. This Court notes that the Applicant did not comply with all the requirements outlined in rule 11 above prior to lodging the instant reference.



17. From the foregoing, I find no basis to interfere with the decision of the Taxing Officer and I also find that on the part of the applicant there was non-compliance with the timelines and procedure laid down in statute, as a result, the reference herein is accordingly dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 23RD DAY OF MAY, 2024.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Migiro for the Respondent

Miss Boiwa holding brief for Mutai Joshua for Applicant

