



**Muthaura Mugambi Ayugi and Njonjo Advocates v Corporate and Pension Trust Service Ltd (Miscellaneous Application E615 of 2021) [2024] KEHC 4985 (KLR) (Commercial and Tax) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4985 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E615 OF 2021  
JWW MONG'ARE, J  
MAY 13, 2024**

**BETWEEN**

**MUTHAURA MUGAMBI AYUGI AND NJONJO ADVOCATES ..... ADVOCATE**

**AND**

**CORPORATE AND PENSION TRUST SERVICE LTD ..... CLIENT**

**RULING**

1. The Advocate filed a bill of costs on 20/8/2021 seeking a sum of Kshs.204,307.00/= in a bid to recover legal fees for services rendered to the Client. Vide a ruling dated 28<sup>th</sup> April 2023 the Bill of Costs was taxed at the sum of Kshs.102,080.00/= in favour of the Advocate. A Certificate of Taxation was issued to that effect on 18<sup>th</sup> May 2023.
2. Consequently, two applications were filed before this court. The 1<sup>st</sup> one is a reference dated 23<sup>rd</sup> May 2023 and was filed by the Client who sought to have the ruling dated 28<sup>th</sup> April 2023 set aside while the second one is dated 31<sup>st</sup> May 2023 and was filed by the Advocate who prayed for judgment to be entered in its favour in accordance with the taxed and certified amount in the Certificate of Taxation.
3. The first application was filed under Rule 11(2) of the [Advocates \(Remuneration\) Order](#) and the Client prayed for the following orders:-
  - “ 1. That this Honourable Court be pleased to set aside the ruling delivered on 28th April, 2023 by the Hon. Taxing Master, Hon. C. Wanyama in respect of the Advocate's Bill of Costs dated 10th August,2021.
  2. That upon grant of prayer one (1) hereinabove, this Honourable Court be pleased to strike out the Advocate's Bill of Costs dated 10th August,2021.



3. That in the alternative to prayer two (2) hereinabove, the decision of the learned Taxing Master in respect of item 1 be set aside and be taxed afresh by this Honourable Court or be remitted for taxation afresh before a different Taxing Master.
  4. That costs of this application be borne by the Advocate.”
4. The application was based on the grounds that the taxing master delivered a ruling on 28<sup>th</sup> April 2022 taxing the Advocate’s Bill of Costs dated 10<sup>th</sup> August 2021 at Kshs.102,081/=.
  5. The Client averred that the taxing master erred when she taxed the Advocate’s Bill of Costs dated 10<sup>th</sup> August 2021 whereas it arose out of the provision of alleged company secretarial services solely provided in the *Certified Public Secretaries of Kenya Act*, CAP 534 Laws of Kenya. The Client contended that the taxing master did not have jurisdiction to tax a Bill of Costs arising from services anchored within the provisions of the said Act.
  6. It was further averred that the taxing master made an error in taxing the Advocate’s attendance at the Annual General Meeting of the Kenya Railways Staff Retirement Benefits Scheme at Kshs.20,000/=, after arriving at a finding that the said meeting took 5 hours instead of the 3 hours and 45 minutes reflected in the minutes. That the taxing officer erred in finding that the Advocate reviewed the Trust Deed and Rules of the Kenya Railways Staff Retirement Pension Scheme and proceeding to tax the item at Kshs.15,890/= whereas there was no iota of evidence to prove it and in finding that the Advocate prepared for the Annual General Meeting of the Kenya Railways Staff Retirement Benefits Scheme and proceeding to award Kshs.50,000/= without any proof of such preparation and in absence of any justification for the award.
  7. This application was opposed by the Advocate vide its replying affidavit sworn on 20<sup>th</sup> June 2023 by Jomo Nyaribo who practises in the Advocate firm.
  8. He averred that it was a misdescription for the Client to describe the Bill of Costs as anchored on the provisions of the Certified Public Secretaries Act and that the claim that the amount awarded was excessive is not supported by any evidence.
  9. The Advocate contended that the Client was intent on delaying the conclusion of this matter and keeping the Advocate away from fees due to an instruction that was executed sometime in the year 2018 and that the Client’s reference lacks merit and ought to be dismissed with costs.

### **Analysis and Determination**

10. The Client filed written submissions dated 17<sup>th</sup> July 2023 while the Advocate filed submissions dated 9<sup>th</sup> August 2023. The Court has analysed and considered the pleadings and submissions of both parties herein and has identified one issue for determination is whether the taxing master erred in awarding Kshs.102,081.00/= to the Advocate as the Advocate-Client costs.
11. The principles of varying or setting aside a taxing master’s decision are set out in *First American Bank of Kenya v Shah and Others* [2002] E A L R 64 where the court held:-

“First, I find that on the authorities, 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.”



12. The Client raised the issue that the taxing master did not have the jurisdiction to tax the Bill of Costs dated 10<sup>th</sup> August 2021 as it arose from services anchored within the provisions of the *Certified Public Secretaries of Kenya Act*. It was submitted that the Advocate represented the Client in the AGM of Kenya Railways Staff Retirement Pension Scheme by attending the meeting and writing minutes. The Client submitted that the Advocate carried out company secretarial services and not legal services as provided under the Advocates Remuneration Order and therefore the taxing officer lacked the jurisdiction to tax the Bill of Costs.
13. On the other hand, the Advocate submitted that company secretarial services were only one of the services rendered by it and in any event the taxing master had the jurisdiction to tax all items described in the Bill of Costs under Schedule 5 of the Advocates Remuneration Order.
14. I have looked at the Bill of Costs dated 10<sup>th</sup> August 2021, I note that the Advocate sought instruction fees for representing the Client in the AGM of Kenya Railways Staff Retirement Pension Scheme, fees for reviewing documents in preparation of the meeting and offering company secretarial services; fees for attending the meeting for a total of 5 hours and fees for reviewing the trust deed and rules of the Kenya Railways Staff Retirement Benefit Scheme.
15. Section 44(1) of the *Advocates Act* states:-

“The Council of the Society may make recommendation to the Chief Justice on all matters relating to the remuneration of Advocates, and the Chief Justice, having considered the same, may by order, prescribe and regulate in such manner as he thinks fit the remuneration of Advocates in respect of all professional business, whether contentious or non-contentious.”
16. The Advocates Remuneration Order is a creation of section 44 of the *Advocates Act* which provides for the remuneration of Advocates in respect of all professional business rendered by an Advocate to a Client whether contentious or not.
17. Although the services offered by the Advocate to the Client as described in the Bill of Costs may fall within the description of company secretarial services, the services are also professional services provided to the Client by an Advocate and fall under services envisioned by section 44 of the *Advocates Act*. Therefore, I find that the taxing master had the jurisdiction to consider the Bill of Costs as filed by the Advocate.
18. The second issue raised by the Client was that the taxing master erred in principle in taxing an amount of Kshs.20,000/= for the Advocate attending the AGM for a period of 5 hours instead of 3 hours and 45 minutes. Although the minutes of the meeting indicate that the meeting carried on for a period of 3 hours 45 minutes, the taxing master did have the discretion to award additional time in light of the fact that the Advocate likely arrived earlier to prepare for the AGM and left after the meeting concluded. I find that the Client has not demonstrated how the taxing master’s decision was based on an error of principle or was so manifestly excessive.
19. The third issue raised by the Client was with respect to the taxing master’s award of Kshs.15,890.00/= on account of reviewing the trust deed and rules. In the ruling of the taxing master, she awarded a sum of Kshs.15,890/= for the general review of documents by the Advocate and not only the review of the trust deed and rules. Once again, the court finds that the amount awarded under this head has not been proved by the Client to be excessive to warrant the interference by this court.



20. The fourth issue raised by the Client is that the taxing master erred in principle in finding that the Advocate prepared for the AGM of Kenya Railways Staff Retirement Benefits Scheme and proceeded to award Kshs.50,000/= without any proof of such preparation. In her ruling, the taxing master awarded Kshs. 50,000/= for the time taken to prepare for the meeting and prepare the minutes. It is expected that the Advocate would ordinarily prepare for the AGM through necessary review of documents and it is not disputed that the Advocate prepared extensive draft minutes as annexed to the Bill of Costs filed in court. Considering that an amount of Kshs.50,000/= was awarded for both the time taken to prepare for the meeting and time taken to draft the minutes, I find that this amount was not excessive.
21. Lastly, the Client contended that the instruction fees were inordinately high. Having considered the issues raised by the Client above, I am of the view that the taxing master exercised her discretion judiciously and her decision was in line with the Advocates Act and the Advocates Remuneration Order. The conditions for setting aside the decisions of a taxing master have not been met.
22. It follows therefore that the second application as filed by the Advocate is granted as prayed. That is, judgement is hereby entered in the Advocate's favour in accordance with the taxed and certified amount in the Certificate of Taxation dated 18<sup>th</sup> May 2023.
23. The upshot of the foregoing is that the Client's application dated 23<sup>rd</sup> May 2023 lacks merit and is dismissed with costs awarded to the Advocate and the Advocate's application dated 31<sup>st</sup> May 2023 is granted as prayed.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MAY, 2024.**

.....  
**J.W.W. MONG'ARE**

**JUDGE**

**In the Presence of:-**

- 1.Mr. Ngethe for the Plaintiff.**
- 2. Mr. Nyaribo for the Defendant.**
- 3. Amos - Court Assistant**

