



**Keti v WK Ngenoh & Co Advocates (Reference E009 of 2024)
[2024] KEHC 7358 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
REFERENCE E009 OF 2024
JK SERGON, J
JUNE 19, 2024
IN THE MATTER OF KERICHO H.C MISC. CIVIL APPLICATION
NO. 7 OF 2023
AND
IN THE MATTER OF KERICHO HIGH COURT CAUSE NO. 6 OF
2017
AND
IN THE MATTER OF THE ADVOCATES REMUNERATION
ORDER
BETWEEN
BETWEEN
MARCELA CHEPKOECK KETI APPLICANT
AND
WK NGENOH & CO ADVOCATES RESPONDENT
RULING**

1. The application coming up for determination is a chamber summons dated 4th April, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That pending the hearing and determination of this chamber summons application, this Honourable Court be pleased to order stay of execution of the ruling of the Honourable



Taxing Officer delivered on 13th day of March, 2024 and all consequential orders arising therefrom.

- (iii) That this Honourable Court be pleased to set aside the decision of the Honourable Taxing Officer delivered on the 13th day of March, 2024 as far as the same relates to the taxation of the Advocates/Clients' Bill of Costs dated 23rd February, 2023, the quantum awarded thereon and the reasoning with respect to the said award.
 - (iv) That this Honourable Court be pleased to re-tax the said Advocates/Clients Bill of Costs.
 - (v) That the costs of this application be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of Marcela Chepkoech Ketu the applicant herein.
 3. The applicant avers that she is the lawful administratrix of the estate of the deceased herein.
 4. The applicant avers that she had filed a reference to this Court in respect of the Advocate/Client Bill of Costs arising from the instant succession cause. The applicant avers that this court allowed the reference in its entirety and ordered for re-taxation before a different taxing master. The applicant avers that the matter was taxed afresh and the taxing master rendered her decision on 13th March, 2024.
 5. The applicant avers that the said ruling allowed the respondent's Bill of Costs as drawn while failing to consider that the Bill as drawn was excessive and/or oppressive to herself and the estate.
 6. The applicant avers that she was equally dismayed to learn that the taxing master condemned her to pay the entire of respondent's legal fees as taxed in clear contravention of rule 55 of the [Advocates Remuneration Order](#).
 7. The applicant avers that she was not acting in her personal capacity but as an administratrix to the deceased's estate and that it was only fair and just that the deceased's estate should bear the costs if any owed to the respondent.
 8. The applicant avers that upon being aware of the ruling of the taxing master and the implication of the said ruling, she instructed her advocate to file a fresh reference seeking re-taxation of the Bill of Costs and a determination as to who should bear the costs of the succession cause.
 9. The applicant avers that she was apprehensive that the respondent would proceed to execute against her as he had served her with a notice of entry of judgment dated 26th March, 2024.
 10. The applicant avers that the respondent threatened to instruct auctioneers unless a stay of orders arising from the said ruling is granted.
 11. The respondent filed a replying affidavit in opposition to the chamber summons dated 4th April, 2024.
 12. The respondent avers that this is a second reference similar to one reference cause no 52 of 2023 with the same issues and thus issues have been conversed and determined on merit, thus the applicant is not coming to court with clean hands to seek justice.
 13. The respondent refuted the claim that the court rendered a bill drawn excessively, the respondent maintained that the applicant was not disputing the figure rather she wanted the court to pronounce her capacity as the administrator to collect the same from the estate, which is a farfetched request, considering the fact that as the administrator, she enjoys those powers and there was no need for court to emphasize the same. The respondent maintained that the instant application is a waste of courts time and calculated to delay paying fees that have accrued since 2017.



14. The respondent maintained that the said application is bad in law, incompetent, premature, misconceived since the applicant was not coming to the court with clean hands and further that it would cause grave prejudice to the respondent if any of the orders sought in the said application are granted in the applicant's favor. The respondent therefore sought an order for security of costs, the respondent urged this Court to order the applicant to deposit the money amounting to Kshs 1,676,084/= in a joint account attracting interest in the names of the applicant and the respondent pending hearing and determination of this matter.
15. The parties were directed to canvas the matter via written submissions. The parties complied and filed their respective submissions which I have duly considered.
16. The applicant in her submissions, maintained that the advocates' fees should be recovered from the estate and not from the applicant herself. The applicant cited the case of *In re Estate of the late Kipsiele Arap Chumo atlas Kipsiele (Deceased)* [2019] eKLR, where Justice George Dulu stated as follows:- "On whether the legal fees is payable from the estate, I have been referred to many court cases. In my view, after a deceased person dies, and in the course of succession proceedings, only the administrator to some extent and subject to the directions of the court can commit the estate of a deceased person to new debts. Other beneficiaries can consent only to the extent of their portion of property entitlement, or anticipated portion from the estate." The applicant cited Rule 55 of the *Advocate Remuneration Order*, where the court has power to order costs to be borne by the estate. It provides as follows:- "The Court may order costs to be borne by the estate of a minor, lunatic, insolvent or deceased person and may give such directions as may be necessary to secure the due payment thereof." The applicant reiterated that at all material times to this suit, she was acting in her capacity as the rightful administrator to the deceased's estate.
17. The applicant submitted that the legal fees allowed by the honorable taxing master was manifestly excessive that it warranted the interference of this Court.
18. The applicant further submitted that had the learned trial magistrate correctly applied the principles of taxation as set out in *Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Others*. EALR (1972) EA 162, considered this case on its own merit and exercised her discretion in accordance with Schedule 10 of the *Advocate Remuneration Order*, she would have awarded fees that were reasonable within the law.
19. The applicant reiterated that the Kshs. Ksh. 1,676,084/= awarded is inordinately expensive, bars parties from access to justice in the court system and was therefore based on an error of principle.
20. The respondent filed submissions in which he refuted any claims that the parties had entered into an agreement for legal fees as contemplated by section 45 of the *Advocates Act*.
21. The respondent submitted that the taxing master followed the relevant provisions of the law, thereby arriving at a figure which was reasonable. The respondent cited the case of *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] eKLR where the Court stated as follows; "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. "
22. The respondent relied on the provisions of section 79 to 83 of the *Law of Succession Act* CAP 16 which sets out the powers and duties of an administrator and contended that there was no room for the administratrix to argue that the court ought to apportion fees among the beneficiaries, the property of the deceased vested in her by law and that she was required to pay the expenses related to the administration of the estate, prior to distribution of the estate.



23. Having considered pleadings and submissions filed by the parties, the issues for determination by this court is whether to set aside the ruling of the taxing master dated 13th March, 2024 in respect to the Advocate/Client Bill of Costs as it was unreasonably high and whether the respondent should pay the entire Advocate/Client Bill of Costs.
24. On the issue as to whether the taxing master exercised her discretion judiciously in determining the legal fees owed and whether she applied the right principles in arriving at her decision, the answer is in the affirmative. I have considered the Advocate/Client Bill of Costs and I find that the sum awarded by the taxing master and the ruling rendered on 13th March, 2024, is based on sound legal principles and provisions of law to wit schedule 10 of the Advocates Remuneration Order and therefore not warranting interference by this Court. In the case of Republic v Ministry of Agriculture and 2 Others; Ex-parte Muchiri W’Njuguna & others NRB HC Misc. Civil Appl. No. 621 of 2000 [2006] eKLR the court held as follows: “ The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award is somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other.... The 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 manifestly excessive as to justify an inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.”
25. On the issue as to who should pay the legal fees, I find that Rule 55 of the Advocate Remuneration Order, is sufficiently clear, the court has power to order costs to be borne by the estate. It provides as follows:- “The Court may order costs to be borne by the estate of a minor, lunatic, insolvent or deceased person and may give such directions as may be necessary to secure the due payment thereof.” The legal fees and other administrative fees should be borne by the estate of the deceased, which by law vests upon the administrator/personal representative of the estate who is required to pay the expenses related to the administration of the estate, prior to distribution of the estate. It is therefore not the role of the court to apportion the legal fees among the beneficiaries.
26. Consequently, the chamber summons dated 4th April, 2024 lacks merit and is hereby dismissed.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF JUNE, 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Miss Cherotich holding brief for Morata for applicant

No Appearance for the Respondent

