



Makhecha & Gitonga Advocates v Standard Group Limited (Miscellaneous Application 179 of 2020) [2024] KEHC 7486 (KLR) (Civ) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION 179 OF 2020

JN MULWA, J

JUNE 20, 2024

BETWEEN

MAKHECHA & GITONGA ADVOCATES APPLICANT

AND

STANDARD GROUP LIMITED RESPONDENT

RULING

1. By a Chamber Summons Application dated 15/12/2022, the Applicant is the Advocates Makhecha & Gitonga Advocates and the Respondent is the client the Standard Group PLC. It is brought under paragraph 11 (1) of the [Advocates \(Regulation\) Remuneration order](#)
2. The Advocates seek that the Taxing Officers ruling delivered on 5/08/2021 be set aside with costs on ground that he erred in taxing the bill at Kshs. 205,129,10/= by failing to apply the correct principles during the taxation that the amount of Kshs. 75,000/= allowed as instructions fees is manifestly low as to be an error of principle.
3. And further supporting is the affidavit sworn on an even date by James Gathuri Advocate representing the Applicant, in which he deposes that the Bill of Costs dated 22/05/2020 was in the sum of Kshs. 621,620/= and taxed at Kshs. 205,129/10/= which is low and urges the court to find that the taxing officer erred in law and set the same aside and vary the said decisions in respect of instructions fees.
4. The respondent opposed the application by grounds of opposition dated 5/12/2023 stating that all items were captured in the submissions in response to the Bill of Costs. That there was nothing exceptional on the face of the pleadings to quantify that the taxing officer acted on wrong principle and cited the case [Joreth Ltd v. Kigano & Associates](#) that where the value of the subject matter could not be determined from the pleadings, the taxing master was entitled to use his discretion. It urged that the motion is vexatious and an abuse of court process.



5. I have considered the reasons for the taxation as provided by the taxing officer and several decisions of the superior courts on subject and the grounds of opposition.

The instruction fees is the only issue for court interrogation.

The Applicant in its bill dated 22/05/2020 had proposed Kshs. 621,000/=. The nature of the suit was damages for libel, permanent injunction to restrain the defendants from further publication for the alleged defamatory story plus interest with item No. 1 – instructions fees at Kshs. 300,000/=. Upon taxation interpartes as both parties filed submission, the taxing officer arrived at Kshs. 205,129.10/= by its ruling dated 25/08/2021.

6. A defence and a reply to defence were filed by the defendant

What is at issue herein is the instructions fees only.

This item is a static item, which is charged once only. It is not dependent on the progression of the case.

Reasons for the taxation were given. They are dated 5/08/2021.

7. To arrive at the impugned sum of Kshs. 75,000/= I note that the taxing officer Hon. L. Mbacho considered the value of the subject matter which is derived from the pleadings, judgment or settled as stated in the case *Joreth Limited v. Kigano & Associates* [2020]eKLR. She made a finding that since there was no judgment, the prayers in the plaint were none-monetary in nature and therefore not able to ascertain the value from the prayers sought. She therefore invoked Schedule 6 paragraph (9) on “Other matters”

8. It is also to be noted that the applicant withdrew from acting for the client before the case was concluded but had some considerable work for which there is no dispute. The court is thus urged to find that the taxing officer failed to follow the correct principles on instructions fees and therefore erred in arriving at Kshs. 75,000/- and failing to consider its submissions on that item of instructions.

9. I have not seen any submissions on this item the applicant having failed to file any. What it considers as matters of principle that the taxing officer failed to consider in this matter therefore remain unsubstantiated.

10. In the case *Kanu National Election Board & 2 others V. Salah Yakub Farah* [2018]eKLR, the court stated:-

“In principle costs are awarded having regard to such factors as (a) difficulty and complexity of the issues (b) the length of the trial (c) value of the subject matter (d) and other factors which may affect the fairness of an award on costs. The law obligates the taxing officer/ master to take into account the above principles”.

11. A perusal of the statement of claim shows that the subject matter of the same is a defamation case and basically the plaintiff was seeking for unquantified damages that the plaintiff would have been awarded if he succeeds in the suit.

12. The taxing officer is faulted for failure to apply the correct principles during taxation. These errors the applicant has not stated.

13. What constitutes an error of principle in taxation matters was defined in the case *First American Bank of Kenya V. Shah & Others* [2000] IEA 64 as follows:-

(b) “it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and according to the Remuneration Order itself some of the relevant factors to



be taken into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved , interest of the parties, the general conduct of the proceedings...” (emphasis added).

14. The Applicant in my view has not demonstrated how or in what manner the taxing master failed to do the above yet the reasons for taxation are well demonstrated therein. It has not pointed to any failure by the Taxing Officer.
15. Further a Taxing Master’s discretion is not to be interfered with unnecessarily unless it has been 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 – *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* [2014] eKLR.
16. It is also to be remembered that it is within the discretion of the taxing officer to increase or reduce the instructions fees before venturing to consider whether to increase it or reduce it.
17. In the above case, the court rendered that the mere fact that the defendant does research before filing a defence and puts a defence informed of such research is not necessarily indicative of the complexity of the matter.
18. Schedule 6(1) of (b) of the *Advocates Remuneration Order* states that once a defence is filed as was the case in the primary suit herein the advocate is entitled to instructions fees in full.
That instructions fees in full depends on what the taxing officer determines upon his discretion based on the principles of taxation and more so on the value of the subject either from perusal of the pleadings or judgment and if not ascertainable, from other matters that I have stated above and more particularly as stated in the case *Kanu National Elections* (*Supra*)
19. I am not persuaded by the Applicant that the Taxing Officer failed to take into account the principles of taxation as stated above nor has it specifically pointed any errors committed by the Taxing Officer.
20. For the reasons stated, I find no merit in the Chamber Summons Application dated 15/12/2022.

It is dismissed with costs.

DATED SIGNED AND DELIVERED IN NAIROBI THIS 20TH JUNE, 2024.

JANET MULWA

JUDGE

