



Nduati & Company Advocates v Muiruri & another (In her capacity as administrators of the Estate of the Late) Margaret Wanjiru Kihanya) (Miscellaneous Application E032 of 2021) [2024] KEHC 8046 (KLR) (Family) (21 June 2024) (Ruling)

Neutral citation: [2024] KEHC 8046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E032 OF 2021
PM NYAUNDI, J
JUNE 21, 2024**

BETWEEN

NDUATI & COMPANY ADVOCATES APPLICANT

AND

PETER KIHANYA MUIRURI & LUCY NJOKI KIHANYA (IN HER CAPACITY AS ADMINISTRATORS OF THE ESTATE OF THE LATE) MARGARET WANJIRU KIHANYA RESPONDENT

RULING

1. The Application for determination is the Chamber Summons dated 26th October 2022, in which the Applicant seeks the following orders; -
 - a. That this Honourable Court be pleased to set aside the ruling of the Taxing Officer delivered on 14th October 2022.
 - b. That this Honourable Court be pleased to interfere with the entire decision of the Taxing Master and tax the bill of costs dated 3rd February 2021 afresh or submit the Bill of Costs for fresh taxation before another Taxing Master in the Family Division.
 - c. That the costs of this Application be provided for.
2. The Applicant is aggrieved at the decision of the taxing matter in which Advocate's Costs were taxed at Kshs.1,841,461.20/=.
3. The Summons were based on the following grounds, namely that; the taxing master failed to expressly state the basis of her decision in respect to instruction fees; that the ruling is riddled with logical inconsistencies as her premises have no logical link with her conclusions on key issue; that the taxing



- master erred in principle by failing to set out the basic instruction fees before proceeding to vary the item on instructions and by failing to give any such reasons informing her decision on the item thus falling into an error of principle; that as a result of the above errors of principle the amounts taxed are manifestly and inordinately low and are not commensurate to the work done;
4. Further that, the that the taxing master failed to appreciate the applicant's election of schedule V Part (ii) and Rule 22 of the *Advocates (Remuneration) Order* thus falling into error of principle and arriving at an erroneous amount; that the taxing master, although considered relevant factors viz, the value of the subject matter, industry put and time spent executing clients instructions when assessing the Bill of Costs, she drew the wrong conclusions contrary to settled principles of taxation; that the taxing master failed to exercise her discretion judiciously thus falling into error of both law and facts; and that an advocate should be fairly reimbursed for work done which reimbursement should be able to attract new recruits into the profession and maintain the nobility and dignity of the profession.
 5. The Respondent opposes the Application and submits that the Taxing master correctly exercised her discretion.
 6. The Court directed that the Application be canvassed by way of written submissions, both parties complied. The Applicants submissions are dated 2nd April 2024, those of the Respondent are dated 5th June 2024.
 7. The Applicant contends that the impugned ruling should be reviewed on the basis that the Taxing master erred in principle and relies on the decisions of *Premchand Raichand Limited & Another vs Quarry Services of East Africa Limited*; *Republic v Ministry of Agriculture and 2 others: Exparte Muchiri W'Njuguna & others*[2006] eKLR ; *Kipkorir, Tito & Kiara Advocates vs Deposit Protection Fund Board* [2005] eKLR ; and *Kamunyori & Company Advocates vs. Development Bank of Kenya Limited*(2015) Civil Appeal 206 of 2006.
 8. The Applicant further relies on the decision in *Delmonte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Murang'a Chapter and 2 others* and *Joreth Ltd vs Kigano & Associated* [2002] 1 E.A 92 on the duty of the court to assess instruction fees.
 9. The Applicant submits that the Taxing Master erred in taxing the instruction fees based on the issues in the case and the volume of documents and ignored the nature and importance of the case, the interest of the parties and the general conduct of the proceedings.
 10. The Respondent in opposition submits that the Taxing master properly exercised her jurisdiction and taxed the bill on the amount of work done by the advocate and relies on the decision in *Joreth Ltd vs Kigano & Associates* [2002] 1 E.A 92. That costs should be reasonable and should not impede access to justice. It was submitted that the Applicant has not demonstrated an error of principle to warrant this court to interfere with the decision of the taxing master.

Analysis and Determination

11. I have considered the ruling on the bill of costs delivered on 14th October 2022, the application, the supporting affidavit, the response, submissions before me and the authorities cited by both sides.
12. The issue which arises for determination in this reference is
 - i. Whether this Court should set aside or vary the decision of the taxing master dated 14th October 2022
13. The principles of setting aside the decisions of Taxing Master were well established in the cases of *Premchand Raichand Limited & Another v Quarry Services of East Africa Limited and Another* [1972]



E.A 162, *First American Bank of Kenya vs Shah and Others* (2002) EA 64 and *Joreth Ltd v Kigano and Associates* (2002) 1 EA 92. These include;

- a. That there was an error of principle.
 - b. The fee awarded was manifestly excessive or is so high as to confine access to the court to the wealthy.
 - c. That the successful litigant ought to be fairly reimbursed for the costs he has incurred.
 - d. That so far as practicable there should be consistency in the award.
14. The court will not normally interfere with the taxing master's ruling simply because it thinks it would have awarded a different figure had it been the one taxing the bill. The court can interfere if it is proved that the amount taxed was manifestly excessive or low; and the court can interfere if there is proof that the taxing officer followed a wrong principle in reaching his decision. (see KANU *National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR).
15. In the case of *Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd* [2014] eKLR, Odunga J emphasized that the circumstances under which a Judge of the High Court interferes with the taxing officer's exercise discretion These principles are: -
- " 1) That 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 manifested excessive as to justify an inference that it was based on an error of principle;
 - 2) 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; the interests of the parties, the general conduct of the proceedings and any direction by the trial Judge;
 - 3) If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset a taxation because in its opinion."
16. The Applicant challenges the ruling of the Court on the basis that the Instruction fee as assessed is inordinately low. The Applicants submits that the learned taxing master erred in principle by failing to consider the value of the estate.
17. It is not contested that the Applicable schedule is Schedule X 1. (a) (f) which provides
- To lodge an objection to grant, or a citation or other application or proceedings under the law not otherwise provided for in this schedule. Such As the taxing officer shall consider reasonable, but not less than Kshs 10000



18. At page 3 of the impugned ruling while considering the appropriate instruction fee the learned Magistrate states the following

The Subject matter comprised a vast estate and the competing interests were many. I cannot down play the research work undertaken by the applicants on the numerous applications on record. Doing the best I can and considering the importance of this matter to the respondent, I do find that Kshs 1,000,000 (represents 100 times increase on basic fee) suffices as instruction fees herein

19. That excerpt from the ruling of the Taxing Master demonstrates that the taxing master did in fact consider the factors that it is alleged she did not. I find that the taxing master correctly exercised her discretion and therefore, in the end, the Chamber Summons Application dated 26th October 2022, is accordingly dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF JUNE, 2024.

P M NYAUNDI

JUDGE

