



**Njoki Njogu & Company Advocates v Kenyan Alliance Insurance Company Limited
(Miscellaneous Civil Case E049 of 2023) [2024] KEHC 9229 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL CASE E049 OF 2023**

GMA DULU, J

JULY 19, 2024

BETWEEN

NJOKI NJOGU & COMPANY ADVOCATES ADVOCATE

AND

KENYAN ALLIANCE INSURANCE COMPANY LIMITED CLIENT

RULING

1. Before me is a Chamber Summons filed by the client through counsel E. Owiti & Company Advocates dated 7th November 2023 under Rule 11 (2) of the *Advocates Remuneration Order*. It relates to taxation of costs arising out of Wundanyi CMCC No. 14 of 2020 Leah Jebungei Rugut & Another v Taita Taveta University College, which went up on appeal as Voi HCCA No. E009 of 2021.
2. The prayers in the application are as follows:-
 1. This court be pleased to review and set aside the ruling of the taxing officer dated 30th October 2023 in its entirety.
 2. The advocates Bill of Costs dated 23rd August 2023 be taxed afresh.
 3. The costs of this application be provided for.
3. The application has grounds on the face of the Chamber Summons that the taxing officer erred in that she awarded 16% VAT on non vatable disbursements contrary to the law; that the taxing officer ignored the clients submissions dated 23rd October 2023 and consequently wrongly assessed items Nos. 1, 12, 19, 23, 24, 26, 31, 32, 37, 39, 44, 45, 49, 50, 54, 55, 59, 66, 67, 71, 75, 77, 79, 80,81, 83, 85, 89, 96 and 100.
 1. The application was filed with an affidavit sworn on 7th November 2023 by Jane Wairimu a Legal Officer of the client Kenya Alliance Insurance Company Ltd, in which the impugned ruling was annexed.



4. After the filing of the above application, the advocate Njoki Njogu & Company Advocates filed a Notice of Motion dated 18th January 2024 seeking entry of judgment for the taxed costs herein, which application was opposed through Grounds of Opposition dated 31st January 2024 filed by E. Owiti & I Company Advocates, as the client had already filed a reference herein or Chamber Summons challenging the taxed costs. I strike out this application (Notice of Motion) as it was filed as an afterthought.
5. The application (Chamber Summons) was opposed through a replying affidavit sworn by Catherine Njogu the advocate on 6th February 2024, in which it was deponed that the Chamber Summons herein is not merited and should be dismissed with costs to the advocate.
6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by E. Owiti & Company Advocates for the client as well as the submissions filed by Njoki Njogu & Company Advocates for the advocate.
7. I have perused and considered the pleadings filed on taxation, the submissions herein and the ruling on taxation, and I have to bear in mind that the determination of cost in taxation, is an exercise of discretionary power by the Taxing Officer and this court will not interfere with the taxed costs, unless the discretion is improperly exercised resulting in an injustice – *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* (2005) eKLR.
8. I note that though the client's counsel herein, had stated in submissions before the Taxing Officer that several items should be taxed entirely, no reasons were given to the Taxing Officer for that contention. The same applies to Item 12 and 13 which were said to be a duplication. Even on this reference, the client's counsel has not given reasons for taxing off the listed items in their entirety.
9. In my view, since taxation is an exercise of discretionary jurisdiction of the Taxing Officer, the client's counsel should have given reasons to assist the Taxing Officer in the request to tax off the items. Failure to do so, the client cannot come under this reference to complain against the decision of the Taxing Officer.
10. I also note that though E. Owiti & Company for the client submitted before the Taxing Officer that there was no judgment in the subordinate court for Kshs. 2,845,147/=, the annexed decree in Wundanyi CMCC No. 14 of 2020 dated 17th December 2020 clearly shows that same amount.
11. Having myself reconsidered the entire taxation, I find that the Taxing Officer was correct in the taxation except with regard to retaining costs for both item 12 and 13 which were a duplication. I will thus tax off item 12 – Kshs. 2,000/= in entirety.
12. With regard to item 100 on VAT, though the client's advocate did not suggest to the Taxing Officer what amount of VAT would be chargeable, he submitted before the Taxing Officer that VAT was chargeable on instructions fees only. I agree that VAT was only chargeable on instruction fees.
13. I note that in the present matter instruction fees in Wundanyi CMCC 14 of 2020 Lenah Jebungei v Taita Taveta University College was listed as Kshs. 141,128.68; and instructions in Voi High Court Civil Appeal E009 of 2021 Taita Taveta University College v Lenah Jebungei is listed as Kshs. 122,400/=, and is not disputed.
14. Thus if 16% VAT is on instruction fees, then the amount would be Kshs. 141,128 + 122,400/= totalling Kshs. 263,528 x 16/100 which would be Kshs. 42,164/=, but the learned Taxing Officer awarded Kshs. 69,126/= Thus, in my view, the VAT amount awarded was excessive. I will vary the amount and taxed.



15. Regarding the argument of counsel for the client that the Taxing Officer did not consider the submissions of counsel on the various items in the Bill of Costs, in my view, that argument is not factual, as the Taxing Officer gave due consideration to the various items in the Bill of Costs, and gave reasons for the decisions made on the said items.
16. Consequently, I find merits in taxing off Kshs. 2,000/= under item 12 of the Bill of Costs and allowing an amount of Kshs. 42,164/= for VAT instead of Kshs. 69,126/= awarded, which is Kshs. 69,126 – 42,164/= 26,962/= The total reduction will thus be Kshs. 26,962/= + Kshs. 2,000/=, totalling Kshs. 28,962/=. I will thus deduct Kshs. 28,962/= from the taxed costs of Kshs. 506,517/= which is Kshs. 506,517 – 28,962 reducing the costs to Kshs. 477,555/=
17. I thus review the taxed costs herein to Kshs. 477,555/=
18. Parties will bear their respective costs of this reference.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF JULY, 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Owiti for client

Mrs. Njau for advocate

