



**Njoki Njogu & Company Advocates v Kenyan Alliance Insurance Company Limited
(Miscellaneous Civil Case E050 of 2023) [2024] KEHC 9230 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9230 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL CASE E050 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. Though not mentioned in the application, it relates to Wundanyi PMCC No. 15 of 2020, which went on appeal in Voi HCCA No. 2021 David Mukiti Mukila =Versus= Taveta University College.
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. 4, 6, 12, 18, 19, 23, 24, 26, 27, 31, 32, 36, 37, 39, 44, 45, 49, 50, 54, 55, 59, 61, 66, 67, 71, 75, 77, 79, 80,81, 83, 89, 94, 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 of the Taxing Officer was annexed.



4. After the filing of this application, the advocate Njoki Njogu & Company Advocates filed a Notice of Motion dated 18th January 2024 asking for entry of judgment on the taxed costs, which application was opposed through Grounds of Opposition dated 31st January 2024 filed by E. Owiti & Company Advocates, asserting that the client had already filed the present reference, challenging the same taxed costs. I dismiss this Notice of Motion filed by the advocate as being an afterthought.
5. This application (Chamber Summons) has been opposed through a replying affidavit sworn by Catherine Njogu advocate on 6th February 2024, in which it was deponed that the application was not merited and should be dismissed.
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 also perused and considered the pleadings filed in the taxation, and the ruling of the Taxing Officer. I have to state here that taxation of costs is an exercise of discretionary power by a Taxing Officer and should not be interfered with by this court unless the Taxing Officer has applied wrong principles – see KANU Elections Board v Shah [2018] eKLR.
8. I note that though the client's counsel had submitted before the Taxing Officer and listed many items which should have been taxed entirely, no specific reasons were given to the Taxing Officer for that contention. I note however, that Item 12 and 13 were a duplication. Even on appeal in this reference, the client's (applicant's) counsel has not given specific reasons for taxing off the listed items in their entirety or proposed amounts of fees per item, such as referring to specific clauses in the Advocates Remuneration Order, but has instead merely mentioned the Advocates (Remuneration) Order 2014, which does not assist this court.
9. In my view, since taxation is an exercise of discretionary jurisdiction of the Taxing Officer, the client's counsel should have given reasons or the legal basis to assist the Taxing Officer in the taxation. Failure to do so, the client cannot come to this court under this reference, to complain, as this court will also find it difficult to assist them.
10. Having stated as above, I find that the Taxing Officer was correct exercise of judicial discretion in the taxation herein, except with regard to two respects. First, retaining costs for both item 12 and 13 which were a duplication. I will thus tax off item 12 – Kshs. 2,000/= in entirety.
11. The second is with regard to item 100 on VAT. In this regard, I note that counsel for the client submitted before the Taxing Officer that VAT was chargeable on instructions fees alone, not the total advocates fees of Kshs. 347,113/=. I agree that VAT is applicable only on instruction fees.
12. Thus the instruction fees in Wundanyi CMCC 15 of 2020 Lenah Jebungei =Versus= Taita Taveta University College being Kshs. 90,000/=:, and instructions in Voi High Court Civil Appeal E009 of 2021 Taita Taveta University College v Lenah Jebungei being Kshs. 90,000/=:, which is not disputed which is fees of Kshs. 180,000/= , that is the only amount that can attract VAT.
13. It follows that 16% VAT on instruction fees, would be Kshs. 90,000 + 90,000/= totalling Kshs. 180,000 x 16/100, which would be Kshs. 28,800/= I note that the learned Taxing Officer awarded Kshs. 55,538/= which was a higher figure. I will thus reduce the VAT to Kshs. 28,800/=
14. Regarding the argument that the Taxing Officer did not consider the submissions filed by counsel for the client, or the items in the Bill of Costs, that argument is not factual. The Taxing Officer gave



consideration to all the items in the Bill of Costs, and made detailed determinations on the amounts in the items.

15. Consequently, I find merits in taxing of Kshs. 2,000/= under item 12 of the Bill of Costs. I will also allow only Kshs. 28,800/= for VAT on instruction fees, instead of Kshs. 55,538/=, which is a reduction of the VAT of Kshs. 26,738/=. I will thus deduct Kshs. 26,738/= and Kshs. 2,000/=, totalling Kshs. 28,738/=from the taxed costs of Kshs. 408,001/= which is Kshs. 408,001 – 28,738, reducing the taxed costs to Kshs. 379,263/=
16. I thus review the taxed costs herein to Kshs. 379,263/=
17. Parties will bear their respective costs of this reference (Chamber Summons).

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

