



**Kemboy Law Advocates v Narok County Government (Civil Miscellaneous Application E351 of 2023) [2024] KEHC 12735 (KLR) (Civ) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 12735 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL MISCELLANEOUS APPLICATION E351 OF 2023  
AN ONGERI, J  
SEPTEMBER 24, 2024**

**BETWEEN**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**AND**

**NAROK COUNTY GOVERNMENT ..... CLIENT**

**RULING**

1. The two parties herein filed two references from the bill of costs taxed on 7/8/2023.
2. The advocate filed a reference dated 21/8/2023 while the client respondent's reference is dated 11/9/2023.
  1. The advocate's reference dated 21/8/2023 is in opposition to the client's reference dated 11/9/2023.
  2. Similar references were filed in both Misc. 351 and 352 of 2023.
3. The references were challenging the taxing officer's decisions in CMCC No. 10727/2018 and CMCC No. 4073 of 2019.
4. The parties filed written submission which I have duly considered.
5. The advocate submitted that the amount awarded by the taxing officer decision was manifestly disproportionate to the suits from which the bill arose.
6. Further, that the amount granted was so excessively low as to amount to substantial oppression and justice to the advocate.



7. The advocate further submitted that the taxing officer's assessment of all the items in the advocate-client bill of costs dated 10/3/2023 was a misapprehension and misapplication of the law and the principles of taxation with respect to the nature of the suit.
8. That the taxing officer failed to correctly apply the principles and formula provided for in Schedule 7 of the Advocates (Remuneration) Order, 2014.
9. Further that the taxing master was rigid in basing the instruction fees on the value of the subject matter and failed to consider the following factors;
  - a. The nature, importance and complexity of the suit giving rise to the taxation.
  - b. The labour expended, professional skill, expertise and responsibility undertaken by the advocate for the period the advocate acted for the client.
  - c. The interest of the parties.
  - d. The conduct of the proceedings
  - e. All other relevant circumstances he ought to have considered.
10. The advocate submitted that if the taxing officer applied Schedule 7 (1) (c) of the Advocates Remuneration Order, the minimum fees would have been 475,043 since the value of the subject matter was 16,201,724.20 in Nairobi CMCC NO. 10727/2018.
11. The Taxing master awarded only 445,043 in respect of instruction fees.
12. In MISC 352 of 2023 the minimum instruction fee would have been 207,401 since the value of the subject matter was 5,496,060.
13. The advocate also relied on the case of Muku vs Methodist Church and another (2015) e KLR where the court held that the taxing master should not restrict himself/herself to the value of the subject matter when assessing costs but should consider other factors.
14. The advocate proposed instruction fees of 6,000,000 in CMCC 10727 of 2018 and 1,000,000 in CMCC 4073 of 2019.
15. The client on their part submitted that they opposed the reference dated 21/8/2023.
16. The client submitted that the taxing officer considered the work done by the applicant but erred in increasing the instruction fees by 50%.
17. The client relied on the following cases on that aspect
  - a) Nyangito & CO. Advocate vs Doinyo Lessos Creameries Ltd (2014) e KLR
  - b) Mumias Sugar Company vs Professor Tom Ojienda & Associates (2019) e KLR
18. The client urged the court to dismiss the reference by the advocate with costs.
19. The sole issue for determination is whether the bill of costs was drawn to scale.
20. I have considered the submissions by both parties and the authorities relied on.



21. I rely on the case of case of Republic Vs Minister For Agriculture & 6 Others (2006) e KLR where Ojwang Judge(as he then) was stated as follows;

- “ 1. 1. the proceedings in question were purely public-law proceedings and are to be considered entirely free of any private-business arrangements or earnings of the tea production sector;
2. the taxation of advocates’ instruction fees is to seek no more and no less than reasonable compensation for professional work done;
3. the taxation of advocates’ instruction fees should avoid any prospect of unjust enrichment, for any particular party or parties;
4. so far as apposite, comparability should be applied in the assessment of advocate’s instruction fees;
5. objectivity is to be sought, when applying loose-textures criteria in the taxation of costs;
6. where complexity of proceedings is a relevant factor, firstly, the specific elements of the same are to be judged on the basis of the express or implied recognition and mode of treatment by the trial judge;
7. where responsibility borne by advocates is taken into account, its nature is to be specified;
8. where novelty is taken into account, its nature is to be clarified;
9. where account is taken of time spent, research done, skill deployed by counsel, the pertinent details are to be set out in summarised form.”

22. In the case of Keziah Gathoni Supeyo v Yano t/a Yano & Co. Advocates [2019] eKLR, the court stated as follows;

“Having considered all these there is no dispute that taxation of costs rests on the principles stated in the case of Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others No.3 (1972 EA 162 where the court stated as follows on the principles on taxation: (a) successful litigant ought to be fairly reimbursed for costs he has had to incur (b) That costs be, not allowed to rise to such level as to confine access to justice to the wealthy. (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and (d) that as far as practicable there should be consistency in the awards made. (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically (g) the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”

1. I agree with the advocate that the taxing officer ought to have taken into account other factors when considering the instruction fees payable.
2. I find the amount awarded of ksh.817,651.02 in CMCC 10727 of 2018 on the lower side.
3. I raise the same to Ksh.2,000,000.



4. The amount in Misc E352 of 2023 arising from CMCC 4073 of 2019 is also raised to 1,000,000.
5. The client withdrew their reference dated 11/9/2023.
6. The client to pay the costs of the advocates references both in Misc E351 and 352 of 2023.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent

