



**Mbogo v Samuel Karimi Guantai t/a Guantai & Associates (Miscellaneous Civil Application E003B of 2021) [2024] KEHC 10893 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS CIVIL APPLICATION E003B OF 2021  
LM NJUGUNA, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**NELLIUS NGAI MBOGO ..... APPLICANT**

**AND**

**SAMUEL KARIMI GUANTAI T/A GUANTAI & ASSOCIATES ... RESPONDENT**

**RULING**

1. The applicant has filed chamber summons dated 28<sup>th</sup> February 2024, being supported by the grounds set out on the face of the application as well as the facts deposed in the supporting affidavit thereof. The orders sought are as follows:
  1. The honourable court be pleased to set aside the taxing master's ruling dated 26<sup>th</sup> June 2023 as it fails to disclose work allegedly done by the respondent;
  2. That the honourable court be pleased to reassess the fees due to the respondent;
  3. That the respondent be compelled to provide to this court evidence of work done on behalf of the respondent to enable the court to assess the amount payable to him as advocate-client legal costs;
  4. That the costs of this application be borne by the respondent.
2. It is the applicant's case that the respondent's bill of costs dated 06<sup>th</sup> September 2021 was taxed at Kshs.153,615/=, which amount the applicant contests. That the taxing master failed to indicate her reasons for the findings and that the respondent did not disclose the actual work that he did on behalf of the applicant. That the applicant was represented in the conveyancing transaction by the firm of Igeria & Ngugi Advocates, a firm appointed by the financier. He denied that the respondent acted for both the vendor and the purchaser as this would amount to conflict of interest. That she already paid the firm of Igeria & Ngugi Advocates the sum of Kshs.79,790/= as legal fees for the transaction.



3. As evidence, she produced a copy of the sale agreement detailing that the respondent acted for the vendor and that he took advantage of the applicant's naivety and stated in the said agreement that he acted for both the vendor and the purchaser. She stated that she only corresponded with the respondent when the financier-appointed advocate instructed him to go to the respondent as the vendor's advocate for signing of the consent forms. That the respondent already raised a fee note of Kshs.104,000/= for settlement by the vendor and purchaser and he also filed a bill of costs against the applicant alone yet he did not receive instructions to act for the purchaser, who is the applicant.
4. She deposed that the bill of costs should be limited to drawing of the sale agreement and the land control board consent forms only and that this court should reassess the same. That the respondent failed to disclose the work done in order to guide the taxing master in her decision. She urged the court to allow this application since she has suffered a great deal as the respondent sought to recover the amount taxed.
5. The respondent filed a replying affidavit stating that the application does not conform with the procedure provided in Rule 11 of the *Advocates Remuneration Order* which mandates the high court to determine the contested aspects only. That the application does not disclose any contested issues and the application is in the form of a civil appeal and not a reference. That a Judge should not interfere with the taxing master's discretion in assessing the costs and that the application fails to disclose any errors that the taxing master fell into. That the bill has been taxed twice and the applicant has never challenged the outcomes. He termed the application as a non-starter and an attempt to deny him the fruits of his ruling.
6. The court directed the parties to file written submissions but none of them complied.
7. The issue for determination is whether the application has merit.
8. Through its ruling delivered on 14<sup>th</sup> February 2024, this court granted the applicant leave to file a reference out of time. The applicant duly complied with this order and filed the application herein. Rule 11(1)&(2) of the *Advocates Remuneration Order* as follows:
  - “(1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
  - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”
9. The parameters for interfering with a taxing master's discretion are laid down in the case of *First American Bank of Kenya vs Shah and Others* [2002] 1 EA 64 at 69 where it was held thus;
  - “First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle”.
10. The applicant seeks re-assessment of costs based on the argument that the respondent did not have instructions to act on her behalf. That the bill of costs ought to have been limited to drawing of the sale



agreement and land control board consent forms. That the applicant was represented in the transaction by a different firm of advocates who were instructed by the financier. The respondent contended that the application herein is, in essence, a civil appeal and that it does not conform with the relevant applicable provisions. It was his case that the application does not raise any error on the part of the taxing master to warrant reassessment of costs by this court. From a reading of Rule 11(1)&(2) of the Advocates Remuneration Order, the application is properly before the court for determination.

11. The sale agreement produced by the applicant indicates that the respondent was acting for both the applicant and the vendor. The veracity of the said sale agreement should not be determined herein because this is a reference and not an appeal. This is an issue that ought to have been canvassed before the taxing master and not before this court as it relates to retainer.
12. As rightly submitted by the advocate, what is before this court is a reference and not an appeal.
13. In the premises, I make the following orders:
  - a. The Chamber summons is hereby dismissed.
  - b. No orders as to costs.
14. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the Appellant

..... for the Respondent

