



Ameli Inyangu and Partners Advocates v Gichuru & 2 others (Family Miscellaneous Civil Case 153 of 2014) [2024] KEHC 12621 (KLR) (Family) (18 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
FAMILY MISCELLANEOUS CIVIL CASE 153 OF 2014
MA ODERO, J
OCTOBER 18, 2024**

BETWEEN

AMELI INYANGU AND PARTNERS ADVOCATES APPLICANT

AND

ANNEKE GICHURU 1ST RESPONDENT

WAMAE GICHURU 2ND RESPONDENT

MOKUA GICHURU 3RD RESPONDENT

JUDGMENT

1. Before this court is the chamber summons dated 24th September 2019 by which the Applicant/ Advocate Ameli Inyangu & Partners Advocates sought the following orders:-

- “1. Spent
2. That the Honourable court be pleased to vary and/or set aside the decision of the Taxing Master in the ruling delivered on the 22nd August 2019 in relation to items No. 7 to 15 of the Advocate/Client Bill of Costs dated 26th of August 2014.
3. That the Honourable court be pleased to reassess the fees due on item No. 1 to 15 of the Advocate/Client Bill of Costs dated the 26th of August 2014.
4. That in the alternative and without prejudice to the foregoing this Honourable Court be pleased to remit Item No. 1 to 15 of the Advocate/Client Bill of costs dated the 26th of August 2014 for taxation before a different Taxing Master.



2. The summons which was premised upon Rule 11(1, 2 and 4) of the Advocates (Remuneration) (Amendment) order 2014 and any other enabling provision of the law was supported by the Affidavit of even date sworn by Geoffrey Eric Odongo an Advocate of the High Court of Kenya.
3. The Respondent/clients Anneke Gichuru, Wamae Gichuru And Mokuia Gichuru opposed the Summons through the Replying Affidavit dated 1st November 2022, sworn by Wandia Gichuru one of the Administrators of the estate of the late Simon Mokuia Gichuru.
4. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated 25th May 2023 whilst the Respondents relied upon their written submissions dated 5th June 2023.
5. This reference arises from the Ruling delivered on 22nd August 2019 by HON. M. Munyolo, Deputy Registrar in relation to the Advocate/client, Bill of Costs dated 26th August 2014. The Taxing Master found That there already existed an agreement between the Advocate and client regarding the legal fees payable and therefore directed That the Respondents pay to the Applicants the agreed sum of Kshs. 250,000/=.
6. Being aggrieved by That decision the Applicant filed this reference.
7. The Applicant contends That the Taxing Master erred in principle in her assessment of costs as the value of the subject matter was worth Kshs. 100,000,000/=. The Applicant denied having entered into an agreement on fees payable as the purported agreement had not been signed by the client.
8. On their part the Respondents insisted That the Advocate stated her fees which the client accepted by giving instructions, thus there did exist a valid agreement on fees as found by the Taxing Master.

Analysis and Determination

9. I have considered this summons the reply filed thereto as well as the written submissions filed by both parties.
10. As a general rule it is the duty of the Taxing Master to tax Bills of cost and this discretion must be exercised judicially. The High Court would only move to interfere with the decision of a taxing master where there has been an error in principle but will generally not interfere on matters of quantum as That is an area where the Taxing Master is deemed to be more experienced. The circumstances under which the High court may interfere with the discretion of the taxing master were set out in the case of First American Bank Of Kenya -vs- Shah & Others [2002]/EA as follows:-
 - (1) The Court will not 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 manifestly 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 Order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest 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, the amount awarded was high;



- (4) It is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary;
 - (5) The Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;
 - (6) The full instruction fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to That item of fees;
 - (7) The mere fact That the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may will be indicative of the advocate’s unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary.”
11. This position was reiterated in *Karen & Associates Advocates vs. Caroline Wangari Njoroge* [2019] eKLR, in which the Court cited the decision of the Court in *Ochieng, Onyango, Kibet and Ohaga Advocates vs. Adopt Light Ltd HC Misc 729 of 2006* where the court stated That;

“.....The taxing master must consider the case and the labour required in the matter, the nature or importance of the matter more so the amount or value of the subject matter involved, the interest of the client in sustaining or losing a brief and the complexity of the dispute. In assessing an amount commensurate to the work undertaken, it is of fundamental importance to consider the value of the subject.....”
 12. Therefore the High Court will only interfere in exceptional cases. Generally costs ought not be allowed to rise to such levels as to confine access to the courts to the wealthy as successful litigant ought to be fairly reimbursed for costs incurred, the general level of remuneration to Advocates should be such as will attract recruits to the profession and so far as practicable there should be consistency in the awards made.
 13. The main bone of contention in this case is the amount awarded as Instruction Fees which is pegged upon the value of the subject matter.
 14. In *REPUBLIC -VS- MINISTER OF AGRICULTURE & 2 OTHERS Ex Parte SAMUEL MUCHIRI NJUGUNA & 6 Others* [2006] eKLR, Hon Justice Ojwang (retired) stated inter alia as follows;-

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other..... 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 manifestly excessive as to justify an inference That it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.....”
 15. Clearly it is important That advocates should be well motivated but it is also in the public interest That cost be kept to a reasonable level so That justice is not put beyond the reach of poor litigants.



16. On instruction fees in the case of Joreth Limited vs. Kigano & Associates [2002] 1EA 92 at 99 the Court of Appeal held That the value of the subject matter for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement or settlement (if such be the case).
17. In this case it is not in any doubt That the client instructed the Advocate to file an application seeking to evict one Christopher Benson Wadura Gichuru from the suit premises. The Advocate filed the application dated 21st March 2012, which application was struck out on 10th October 2023.
18. Vide e-mail correspondence dated 6th August 2019 (see Annexure WG ‘3’ to the Replying Affidavit dated 3rd June 2019) one ‘Geoffrey’ from the Applicants law firm indicated to the Respondents That the cost of the Application being Instruction fees disbursements on preparation and filing of the Application would be Kshs. 250,000.
19. Yet again on 18th February 2012, the Applicant sent another e-mail confirming That the cost of filing the application would be Kshs. 250,000 (Annexure WG ‘4’).
20. Once again via an e-mail sent on 3rd April, 2012, the Applicant stated That

“ The cost of the litigation is Kshs. 250,000/= as indicated in my email of 18th February 2012. If we were to work with disbursements payable upfront necessary to enable us commence we would need Kshs. 120,000/=-----“ (Annexure WG 5’)
21. From the above correspondence it is clear That the fees which the Advocate was to charge for the filing of the application was Kshs. 250,000. There is no evidence by way of any other correspondence to support the Advocates claim That this amount was only indicated to be an interim fee.
22. Therefore I do agree with the learned Taxing Master That the parties had reached an agreement on the fees payable.
23. The Applicant has alleged That the Taxing Master failed to give reasons for her decision.
24. Rule 11(1) of the Advocates (Remuneration) order provides

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 - (1) should any party object to the decision of the taxing officer, he may within fourteen 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”
25. In this case the Applicant did write a letter dated 3rd October 2019 seeking to be provided with the reasons for her decision. Vide a letter dated 7th October 2019, the Taxing Officer responded That the reasons were contained in the Ruling itself (see Annexure GEO ‘4’ to the Supporting Affidavit)
26. I have perused the ruling dated 22nd August 2019, I find That the Taxing Officer delivered a reasoned ruling. In the circumstances there would be no need for her to write a second ruling to expound on the reasoning contained in the original ruling.



27. On the whole I find no merit in this reference. The same is hereby dismissed in its entirety. Costs are awarded to the Respondent/client.

DATED IN NYERI THIS 18TH DAY OF OCTOBER, 2024

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MAUREEN A. ODERO

JUDGE

