



**Hamilton Harrison & Matthews v Jaribu Credit Traders Limited (Miscellaneous Civil Case E085 of 2022) [2024] KEHC 11826 (KLR) (Civ) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11826 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL CASE E085 OF 2022  
JN MULWA, J  
OCTOBER 3, 2024  
IN THE MATTER OF THE ADVOCATES ACT  
AND  
IN THE MATTER OF THE TAXATION OF COSTS BETWEENIN  
THE MATTER OF HIGH COURT CIVIL DIVISION CAUSE NO.  
914 OF 2003  
ADVOCATE AND CLIENT**

**BETWEEN  
HAMILTON HARRISON & MATTHEWS ..... APPLICANT  
AND  
JARIBU CREDIT TRADERS LIMITED ..... RESPONDENT**

**RULING**

1. By a Chamber Summons application dated 22/12/2023 the Respondent/Client (Jaribu Credit Traders Ltd) seeks Orders:-
  1. That the Honourable court be pleased to vary, review or set aside the Ruling and Reasons of the Honourable Deputy Registrar, T.E. Marienga dated 28/11/2023 which re- taxed the Advocate/ Client Bill of Costs dated 17/2/2022 at a total amount of Kshs. 641,632.94.
  2. That this Honourable court be pleased to take into consideration the deposit on fees paid in the sum of Kshs. 586,886/= and credit the amount.



3. That this Honourable Court in the alternative be pleased to order that the Advocate -Client Bill of Costs dated 17/2/2022 be placed before another Taxing Master for further re-taxation taking into consideration clause 2 above.
4. That cost of this application be awarded to the Respondent/ Client.
2. The chamber summons is premised upon Rule 11(2) and 11(4) of the Advocates (Remuneration) Order and further supported by the affidavit sworn on 22/12/2023 by Suresh Kantaria a Director of the Respondent/Client herein.
3. The Advocate/Applicant opposed the application through the replying affidavit sworn on 25/3/2024 by Ezra Makori, a partner in the firm of Hamilton Harrison & Matthews.

**Brief background.**

4. The Respondent/Client (hereinafter referred to as the client) instructed the Advocates to defend it in the case Milimani HCCC No. 914 of 2003 Jaribu Credit Traders Ltd v and Amedo Centers Ltd and the hon. Attorney General which the advocates did and raised an Advocate/Client Bill of Costs dated 17/2/2022. The Bill was taxed on 28/7/2022 whereby the instructions fees was taxed at Kshs. 200,000/= and taxed off Kshs.200,000/=.
5. The client being dissatisfied with the ruling, particularly to instructions fees which is the subject of this ruling filed a reference stating that the Taxing Officer failed to take into account and credit a sum of Kshs.586,886/= allegedly paid as deposit. The reasons for the taxation were supplied by the Taxing. Upon consideration of the reference the court directed re-taxation of the bill of costs by a different taxing officer which was done by the Hon.T.E.Marienga and a ruling delivered on 28/11/2023 in the sum of Kshs. 641,632,94./=.
6. The client was for the second time dissatisfied with the award, resulting to the instant application for orders of review of the award, seeking for an order that the sum of kshs.586,886/= be taken into account as having been paid as deposit on fees, and faulting the Taxing Master for failing to credit the said amount of Kshs. 586,886/= and also failed to give written reasons for the omission thereby occasioning a miscarriage of justice.
7. The court has considered the client’s grievances, the affidavits in support and in opposition of the chamber summons and flags only one issue for determination:

Whether the client had paid a deposit on instructions fees of Kshs. 586,888/= (amended to Kshs.568,886/=) to the Advocates, and if so, whether the taxing officer factored and/ or accounted for the same in her ruling and reasons for taxation dated 28/11/2023.

8. The Client in the further affidavit dated 30<sup>th</sup> April 2024 amended the alleged deposit to read Kshs. 568,886/=on account of a typing error.

The court has confirmed from the documents filed that reasons for the taxation were indeed provided to the parties together with the impugned ruling dated 28/11/2023.

The client’s submissions are dated 14/6/2024 and the Advocates are dated 29/8/2024.

**The Client’s Case and Submissions.**

9. By its supporting Affidavit sworn on 22/12/2023, the client faults the taxing masters decision stating that he erred in principle by an act of omission in failing to credit the deposit paid by the Respondent/ Client to the tune of Kshs. 586,886/= and failed to give reasons for such omission, when documentary



evidence of payment were provided among them fee statements, receipts of payments, letters and acknowledgement of the said deposit, and therefore, it was an error for failure to consider the said deposit without giving any reasons for the omission.

10. Additionally, the client deposes that a deposit of Kshs. 518,886/= had been considered in the earlier taxation by Hon. Bacho dated 28/7/2022 and therefore fails to understand why the same was not considered in the taxation under review.
11. It is the client's submissions that as the first Taxing officer had considered the impugned deposit, there is no reason advanced why during re taxation the deposit was not considered and taken into account, yet the Advocates had acknowledged receipt in its replying affidavit to the chamber summons. It is a further submission that the Advocates acknowledged receipt of Kshs. 198,718/= which they state was used in other files they were handling on its behalf.  
  
Further, the client deposes that the Advocates were holding a sum of Kshs. 942,852/= from which they deducted the taxed sum of Kshs, 641,632.94.
12. The client cited the case of *First American Bank of Kenya Ltd v. Gulab P. Shah & 2 others* (2002) eKLR to urge that the High Court has power to recall the subordinate court proceedings and review the same as stated at Article 165 of the *Constitution* and consider to ensure fair administration of justice.

#### **The Advocates case and submissions.**

13. It is its case as deposed to in its replying affidavit and the case of *First American Bank of Kenya Ltd (Supra)* that the court cannot interfere with the taxing officer's decision on taxation unless it is shown that the decision was based on an error of principle that the award is manifestly excessive as to justify an inference that it was based on an error of principle among others.
14. On the impugned deposit it is the case by the Advocates that it received a sum of Kshs. 518,868/= and provided a schedule (at paragraph 9 and 10 of Replying Affidavit showing how the deposit was utilized and apportioned ex. (page) in other files for the client which is well acknowledged by the client, and a return of the balance to the client of Kshs. 349,958/= which was duly acknowledged at paragraph 6(VII) of the clients further affidavit.
15. Replying on the holding in the case of *Kipkorir Tito & Kiara Advocates v. Deposit Protection Fund Board* [2005] eKLR where the court held that the judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the officer erred in principle in assessing the costs and argued that the said deposit was utilized as aforesaid and balance refunded to the client.
16. That having been done it is the4 advocates submission that the deposit having been accounted for and taken into account, the chamber summons is not merited.
17. On the sum of Kshs. 942,852/= held by the advocates 2which is acknowledged the advocates submit that the same was partly used to settle the bill of costs dated 13/12/2023 and balance returned to the client on 13/12/2023.
18. For a party to succeed in a reference, it is required to show that its case meets the principles set in jurisprudence for interference with the exercise of discretion by the Taxing Master. These principles were succinctly enunciated in *First American Bank of Kenya v Shah and Others* [2002] E.A.L.R 64 at 69 in which Ringera J (as he then was) observed as follows:

“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... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors... some of the relevant factors include the nature and importance of the cause or matter, the amount or value of this subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial judge...not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him...”

19. Likewise in the case of *PZ Cussons East Africa Limited v Kenya Revenue Authority*, *Supra*, the Judge cited the decision of the Court of Appeal in *Thomas James Artur v Nyeri Electricity Undertaking* [1969] EA 64 at page 69 that: -

“Where there has been an error in principle, the court will therefore interfere, but questions solely of quantum are regarded as matters with which the Taxing Officers are particularly fitted to deal and the court will interfere only in exceptional circumstances.”

20. Similarly, the Court of Appeal in the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR stated that:

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the Taxing Officer, erred in principle in assessing the costs.”

Additionally, in the case of *Republic v Minister for Agriculture & 2 Others* [2006] KLR it was held that;

“.....Taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will therefore not interfere with the award of a taxing officer particularly where he is an experienced officer.”

21. The Client submits that the Taxing master erred in principle by an act of omission in failing to credit the deposit paid by the Respondent/Client to the tune of Kshs. 586,886/= and failed to give reasons for such omission thereby occasioning miscarriage of justice.

An effort of principle are defined in the *First American Bank of Kenya* case (*supra*) must be identified. The client has not shown to the judge that the taxing officer took into account irrelevant factors of omitted to take into account relevant factors and so if so, which irrelevant factors she took into account or failed to take in to account the advocates tabulation of the money received as deposits and money it held for the client was utilized in other client files and particularly indicated the dates and amounts utilized and balances refunded to the client.

22. The court of appeal in the case of *Thomas James Arthur V. Nyeri Electricity undertaking* [1969] EA at page 69 held that:

“Where there has been an error of principle, the court will therefore interfere but questions solely on quantum are regarded as matters which the taxing officers are particularly fitted to deal with and the court will interfere only in exceptional circumstances”.

23. The Taxing Officers discretion ought not be interfered with unless it is clearly shown that the officer erred in principle in the assessment of the costs as held in *Kipkorir, Titoo & Kiara Advocates (Supra)* and in the *Republic V. Minister for Agriculture & 2 Others (supra)* wherein it is common ground that as much as the taxing officer is taxed with mathematical considerations of the amounts charged for the



work done, the bottom line is that upon consideration the taxing officers work or assignment is purely a matter of opinion that however must be based on the material facts and documents placed before the Taxing Officer.

24. Upon analysis of the grievance by the client against the Advocates, the judge herein is not persuaded that the taxing officer committed an error of principle in failing to consider the deposit paid to the Advocate. The judge is satisfied that the advocates accounted fully how the deposit of Kshs. 518,886/= and the sum of Kshs. 942,852/= was utilized, and further shown that the balances of Kshs. 349,958/= as well tabulated at its replying affidavit at paragraphs 9 & 10.
25. It is worth noting that the client has not rebutted the Advocates tabulations in the replying affidavit. In addition the client was unable to persuade the judge that the impugned deposit of Kshs. 518,886/= and amended to Kshs. 568,886/= was not accounted for or not taken into account in the taxing officer's assessment.
26. Additionally, it is to be noted that the instant chamber summons dated 22/12/2023 is not an appeal against the Taxing Officers taxation resulting to the ruling of Hon. L. Bacho (DR) dated 28/07/2022.
27. It is a reference on the ruling re-taxation of the bill of costs dated 17/02/2022, by the Hon. Deputy Registrar, T. E. Marienga dated 28/11/2023 wherein the said Advocate-Client Bill of costs was taxed at Kshs. 641,632.94 which costs the Advocates have already been paid by deducting the same from the money the Advocates held on behalf of the client.
28. For the foregoing I decline to set aside vary or review the Ruling of the Taxing Master dated 28/11/2023. It is upheld. The chamber summons dated 22/12/2023 is dismissed with costs to the Advocates.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024**

**JANET MULWA**

**JUDGE**

