



Meru County Public Service Board v Mbogo & Muriuki Advocates (Miscellaneous Civil Case E011 of 2021) [2023] KEHC 2321 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2321 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL CASE E011 OF 2021
TW CHERERE, J
MARCH 16, 2023**

BETWEEN

MERU COUNTY PUBLIC SERVICE BOARD APPLICANT

AND

MBOGO & MURIUKI ADVOCATES RESPONDENT

(A reference from the Ruling and Order of Hon. E. Tshimonjero, Deputy Registrar at Meru in HC Miscellaneous Civil Application No. 29 of 2022)

RULING

Background

1. It is not disputed that Applicant instructed the Respondent to act for it in Meru Constitutional Petition No 29 of 2018. Upon conclusion of the matter, Respondent sent to the Applicant a fee note dated February 6, 2019 demanding Kshs 2,900,000/-. When Applicant did not pay, Respondent on May 30, 2022 filed the Advocate/Clients Bill of Costs dated May 27, 2022.
2. In response to the Bill of Costs, Applicant on July 18, 2022 filed a response dated June 22, 2022. On instructions fees at Item 1, Applicant proposed a sum of Kshs 100,000/-. Applicant conceded that Respondent was entitled to getting up fees at 1/3 of the Instructions fees and an increase of 50% on all items except disbursements.
3. Additionally, Applicant conceded to various items being taxed as drawn and made proposal in several other items.
4. The Taxing Master in a detailed ruling dated October 28, 2022, with reasons for each and every item taxed the Bill of Costs at Kshs 3,393,408/-.



5. Subsequently by a letter dated October 31, 2022, Respondent brought it to the attention of the Taxing Master that the ruling dated October 28, 2022 did not increase the instruction fees by 50% and had failed to award VAT at 16%.
6. The Taxing Master after considering the ruling dated October 28, 2022 and Respondent's letter dated October 31, 2022 conceded that there was an error in the ruling that omitted to increase the instruction fees by 50 % and had failed to award VAT at 16%.
7. By an amended ruling dated November 2, 2022, the Taxing Master increased the instructions fees by 50% and awarded VAT at 16% thereby taxing the bill at Kshs 5,904.529.92 cts.
8. By chamber summons dated February 22, 2023, Applicant prays that all the items be re-taxed. The application which is supported by two affidavits sworn on February 22, 2022 and February 27, 2022 by Irah K Nkuubi, the Applicant's Deputy Solicitor General is based on the following grounds:
 1. The bill of costs was taxed for more than was sought by the Respondent in their letter to Applicant dated February 6, 2019
 2. The Taxing Master did not provided reasons for taxation requested *vide* Applicant advocate's letter dated November 16, 2022
 3. The Taxing Master failed to consider similar matters where the bill was settled at Kshs 2,900,000/-
 4. The sum taxed at item 1 is excessive
 5. Items 5 ad 18 are unnecessary items
6. The Taxing Master erred by increasing the costs on disbursements by 50%
9. Respondent through Ken Muriuki advocate's replying affidavit sworn on February 23, 2023 opposes the chambers summons on the following grounds:
 1. Applicant did not respond to Respondent's fee notes dated February 7, 2021 and January 25, 2022
 2. The Taxing Master's rulings contain detailed reasons and the Applicant ought to have filed a reference within 14 days of the final ruling
 3. The Applicant conceded to more than 40 of the 43 items on the bill and particularly conceded increase of instructions fees by ½
 4. VAT is a legal requirement
10. I have considered the chamber summons in the light of affidavits and annexures on record and the written and oral submissions and authorities filed on behalf of the parties and I will address the issues as hereunder.
 - i. The bill of costs was taxed for more than was sought by the Respondent in their letter to Applicant dated February 6, 2019
11. It is on record that Respondent had by a fee note dated February 6, 2019. The fee note was served on Applicant on February 7, 2019 but the Applicant did not pay. For the appellant to enforce the fee note, it should have taken up the issue before taxation of the bill. Having failed to do so, Applicant is estopped from it at this stage in time.



12. Reasons for taxation requested *vide* Applicant advocate’s letter dated November 16, 2022
13. As rightly submitted for the Respondent, the Taxing Master’s rulings contained concise and detailed reasons for each item taxed. The Applicant’s request for reasons in the circumstances of this case, in my considered view amounts to requesting for duplication of the rulings which is waste of previous judicial time. (See [Nyamogo & Nyamogo Advocates v Kenya Pipeline Company Limited \[2018\] eKLR](#), [A M Kimani & Co Advocates v Trident Insurance Company Limited \[2016\] eKLR](#) and [Okoth & Co Advocates v Mount Kenya University \[2021\] eKLR](#)).
14. The sum taxed at item 1 is excessive
15. In the case of [Peter Muthoka & another v Ochieng & 3 others \[2019\] eKLR](#), the Court of Appeal stated thus;

“It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.” (emphasis ours).

16. The taxing officer was exercising his discretion when taxing the bill of costs in issue. The parameters on interference of the discretion of the trial court are well defined. If the discretion was exercised judiciously, this Court cannot interfere simply on the ground that if it were sitting as the court of first instance, it might have given different weight to that given by that court to the various factors in the case. For avoidance of doubt, (See [Mbogo & Another v Shah \(1968\) EA 93](#)).
17. I have warned myself of the circumstances under which this court could interfere with the discretionary decision of the taxing officer and this can only be done if there was error of principle. (See [D Njogu & Company Advocates v National Bank of Kenya Limited, \[2016\] eKLR](#)).
18. I have considered the reasons given by the Taxing Master for taxing item 1 as he did and I did not see any error of principle. The fact that a similar matter had been settled at Kshs 2,900,000/- does not in my considered view make the sum taxed on item 1 excessive for the reason that each bill is taxed on its own merit.

Items 5 ad 18 are unnecessary items

19. The Taxing Master after satisfying himself that Respondent had attended court on May 2, 2019 for submissions and October 28, 2019 for judgment lawfully awarded Kshs 1,100/- attendance fees.
The Taxing Master erred by increasing the costs on disbursements by 50%
20. Schedule VI of the Order, which is the applicable provision in this matter is divided into two sections; Part A which provides for party and party costs, while Part B deals with Advocate and client costs.



21. What is chargeable between the Advocate and client is aptly expressed in Part B, of Schedule VI, which specifies that;
- “ As between advocate and client the minimum fee shall be—
- (a) the fees prescribed in A above, increased by 50%; or
 - (b) the fees ordered by the court, increased by 50%; or
 - (c) the fees agreed by the parties under paragraph 57 of this order increased by 50%; as the case may be, such increase to include all proper attendances on the client and all necessary correspondences”.
22. By a response filed on July 18, 2022 to Respondent’s bill of costs dated June 22, 2022, Applicant conceded that Respondent was entitled to getting up fees at 1/3 of the instructions fees and an increase of 50% on all items except disbursements.
23. The upshot is that the Applicant is estopped from raising the issue of increment by 50% as a challenge to the Certificate of Costs.
24. The foregoing notwithstanding, I agree with the Applicant that the increment only applies to instructions fees and the Taxing Master therefore erred in increasing all items at 50%.
25. Consequently, the reference only succeeds on the issue of increment of 50% on disbursements.
26. This matter is therefore referred to another Taxing Master to re-tax item 1 only as concerns the increment by 50% and to thereafter issue the necessary Certificate of Costs.

DATED AT MERU THIS 16TH DAY OF MARCH 2023

WAMAE T W CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Client/Applicant - Mr Mutuma for Mutuma & Koskei Advocates

For Advocate/Respondent - Mr Muriuki for Mbogo & Muriuki Advocates

