



REPUBLIC OF KENYA



KENYA LAW
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**Patani v Patani (Miscellaneous Application 883 of 2021)
[2023] KEHC 1626 (KLR) (Commercial and Tax) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 883 OF 2021**

**A MABEYA, J
MARCH 10, 2023**

BETWEEN

PRADEED HARAKCHAND PATANI APPLICANT

AND

SHOBHNABEN PANKAJ KUMAR PATANI RESPONDENT

RULING

1. The applicant filed this reference under sections 1A, 1B, 3A of the *Civil Procedure Act* cap 21 sections 58 of the *Advocates Act*. The application sought to have the taxed bill of costs dated 16/11/2016 set aside and remitted back for fresh taxation before a different taxing master.
2. The reference was supported by the affidavit sworn by Pradeed Harakchand Patani and was based on the grounds on the face of it. It was contended that the taxing master erred in principle in taxing the bill of costs at Kshs 150,786/= without considering the subject matter. That the subject matter was above Kshs.10 million however the taxing master used an unknown taxation procedure.
3. The respondent filed grounds of opposition dated 29/3/2022 where it was stated that the application was resjudicata, incompetent and void of merit. That the court was functus officio as the court had already addressed itself on the matter. Further, it was contended that the taxing master had judiciously exercised her discretion in assessing the bill of costs.
4. Although parties were directed to file submissions, none had been filed by any of the parties as at the time of writing this ruling.
5. I have considered the record. The issue before the court for determination is whether the taxing master erred in principle in assessing the bill of costs. Paragraph 11 of the *Advocates Remuneration Order* lays down the procedure for challenging the results of taxation. It provides that: -



- 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.
 - 3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
...”
6. The applicant’s case is that there was an error in principle in the taxation of the bill of costs dated 16/11/2016. According to the applicant, the costs awarded at Kshs 150,786/= were based on a taxation procedure that was unknown and awarded without consideration of the subject matter which was over Kshs.10 million.
7. In *Republic vs. Ministry of Agriculture & 2 others Ex parte Muchiri W’njuguna & 6 others* [2006] eKLR, the court held: -
- “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 interference that it was based on an error of principle.”
8. It is trite that the court will only interfere with the decision of the taxing master if there is an error in principle. In the present case, the applicant has challenged the entire assessment by the taxing master. I have perused the ruling. The taxing master started by reminding herself on the principles applicable on instructions. She correctly cited the Court of Appeal decision in *Joreth Limited vs. Kigano & Associates* [2002] E.A 92 wherein it was held that for the purposes of the value of the subject matter, what was to be considered is the pleadings, judgment or settlement.
 9. In the present case, the taxing master found that there was no value cited anywhere in the pleadings or ruling. In the premises, she followed strictly the amounts specified in the applicable *Advocates Remuneration Order*.
 10. In the premises, I do not find any error of principle to warrant this Courts interference. It is not enough for an applicant to merely state that an error exists, he must specifically substantiate such a claim. My view is that the allegation that the bill was taxed by an unknown procedure is without basis.
 11. In the premises, I find that there was no error of principle to warrant this court’s interference. The upshot is that the application lacks merit and is dismissed with costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF MARCH, 2023.



A. MABEYA, FCIArb

JUDGE

