



Mwaura Kelvin Karuga & Associates Advocates v Kuria (Miscellaneous Application E061 of 2022) [2023] KEHC 17922 (KLR) (Judicial Review) (19 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

MISCELLANEOUS APPLICATION E061 OF 2022

JM CHIGITI, J

MAY 19, 2023

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW FOR ORDERS OF PROHIBITION, MANDAMUS AND CERTIORARI**

AND

**IN THE MATTER OF PART IV, SCHEDULE 7 OF THE UNCLAIMED
FINANCIAL ASSETS AUTHORITY ACT, NO 40 OF 2011 LAWS OF KENYA**

BETWEEN

GEOFFREY KIARIE KURIA.....APPLICANT

AND

THE UNCLAIMED FINANCIAL ASSETS AUTHORITY.....RESPONDENT

BETWEEN

MWAURA KELVIN KARUGA & ASSOCIATES ADVOCATES ADVOCATE

AND

GEOFFREY KIARIE KURIA CLIENT

RULING

1. The application before this court is the Notice of Motion application dated October 17, 2022 and it seeks the following prayers;
 - i. This application be certified urgent.



- ii. This Honourable court be pleased to grant in the interim the stay of execution of the ruling it delivered in open court on October 4, 2022 pending the hearing and determination of the application herein.
 - iii. This Honourable court be pleased to review and vary its said Ruling delivered on October 4, 2022.
 - iv. The costs of this application be provided for.”
2. The application is supported by the supporting affidavit of Geoffrey Kiarie Kuria sworn on October 17, 2022.
 3. The Applicant’s case is that pursuant to the Court’s Ruling of October 4, 2022 the Applicant herein was directed to pay the Respondent herein the sum of Kshs 179,452/=. However, the Applicant contends that aside for the sum of Kshs 13,900/= which had already been paid to the Respondent and subsequently deducted by the Court the Applicant had paid a further sum of Kshs 75,200/=.
 4. The Applicant contends that the court failed to consider the annexed receipts as they were filed as separate documents from the Replying Affidavit as the same could not have been uploaded as one document on the Court’s filing system. It is the Applicant’s case that there is a possibility that they never made it to the physical file as the court did not consider them in its Ruling.
 5. There is no response on record.
 6. The application was canvassed by way of written submissions. The Applicant filed written submissions dated October 17, 2022. In the submissions the Applicant contends that the omission on the part of the court which was inadvertent is self-evident and does not require an elaborate argument for it to be established. The case of *Republic vs Advocates Disciplinary Tribunal Ex Parte Apollo Mboya* [2019] eKLR is cited to buttress this argument.
 7. The Respondent (Mwaura Kelvin Karuga & Associates Advocates) also filed written submissions dated November 30, 2022.
 8. In the submissions the Respondent contends that sometime in 2021, Mwaura Kelvin Karuga was instructed to recover the sum of Kshs 1,279,000/= from the Unclaimed Financial Assets Authority, which money formed part of the Estate of the Applicant’s late father.
 9. It is submitted that counsel subsequently filed an Application for Judicial Review MISC JR Application No E077/2021 where the Unclaimed Financial Assets Authority, offered to settle the matter out of court. The Authority released the said sum of Kshs 1,279,000/= to the beneficiaries of the Estate, four of whom did not pay any amount to counsel despite deriving a monetary benefit of Kshs 127,000/= each.
 10. The said beneficiaries it submitted were Peter Kuria, Phyllis Wangari, Simon Muhia, Joseph Kuria, Nellie Nduta, Eunice Muthoni, Margaret Wanjiru, Bernard Njoroge, Geoffrey Kiarie and Lucy Wanjiku.
 11. The Respondent submits that no material has been put before the Court in the form of a Certificate of Taxation to warrant the exercise of its discretion to grant a stay of execution. Further, that some of the monies paid as evidence by the Applicant were not in relation to JR Misc Application No E077/2022.
 12. From the case adduced by the parties herein I find that the only issue that forms for determination is whether the orders sought herein are merited.



13. The Court in the case of *Ishmael & Co Associates v Bajaj Electricals Limited & Wayne Homes* [2020] eKLR had the following to say on a court's discretion to interfere with a Taxing Master's decision;

9. The general principles governing interference with the exercise of the taxing master's discretion were authoritatively stated by the South African court[5] as follows:-

“The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

10. Differently put, before the court interferes with the decision of the taxing master it must be satisfied that the taxing master's ruling was clearly wrong, as opposed to the court being clearly satisfied that the taxing master was wrong. This indicates that the court will not interfere with the decision of the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differs so materially from its own that it should be held to vitiate the ruling.[6]

11. It is settled law that when a court reviews a taxation it is vested with the power to exercise the wider degree of supervision.[7] This means that:-

“ . . . that the Court must be satisfied that the Taxing Master was clearly wrong before it will interfere with a ruling made by him . . . viz that the Court will not interfere with a ruling made by the Taxing Master in every case where its view of the matter in dispute differs from that of the Taxing Master, but only when it is satisfied that the Taxing Masters view of the matter differs so materially from its own that it should be held to vitiate his ruling.[8]

14. The Court continues to state as follows;

14. It is a well-established principle of review that the exercise of the Taxing Master's discretion will not be interfered with 'unless it is found that he/she has not exercised his/her discretion properly, as for example, when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.'[10]

15. In principle, costs are awarded, having regard to such factors as: - (a) the difficulty and complexity of the issues; (b) the length of the trial; (c) value of the subject matter and (d) other factors which may affect the fairness of an award of costs. The law obligates the taxing master



to take into account the above principles. Restating the principles of taxation of costs, the Ugandan Supreme court stated: -[11]

"Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently, a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.

Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. In this regard, application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.

Thirdly, even if it is shown that the taxing officer erred on principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties."

15. In the case before this court the Applicant is calling upon the court to review and vary the ruling dated October 4, 2022 on grounds that the Taxing Master failed to consider in her Ruling that a further payment of Kshs 75,000/= was paid to the Respondent. This in my opinion affects the decision on quantum and is likely to cause an injustice to the Applicant herein.
16. The Court has had due regard to the annexures annexed to the Applicant's application which are receipts issued by the firm of Mwaura Kelvin Karuga & Associates Advocates the Respondent herein. The receipts read as follows;
 - i. Benard Njoroge paid Kshs 10,000/= on June 9, 2021 for Judicial Review.
 - ii. Mr Geoffrey Kiarie paid Kshs 15,000/= on June 9, 2021 for Legal fees for Judicial Review.
 - iii. Hotel Starehe Ltd paid Kshs 3,000/= on June 28, 2021 for legal fees for JR 077 of 2021.
 - iv. Eunice Kuria paid Kshs 10,000/= on June 9, 2021 for Judicial Review fees.
 - v. Nelly Kuria paid Kshs 10,000/= on June 9, 2021 for Judicial Review fees.
 - vi. Lucy Wanjiku paid Kshs 10,000/= on June 9, 2021 for legal fees for Judicial Review.
 - vii. Margaret Wanjiru paid Kshs 10,000/= on June 9, 2021 for legal fees for Judicial Review.
 - viii. Geoffrey Kiarie Kuria paid Kshs 4,000/= on August 10,2021 for legal fees for JR Misc E077 OF 2021.
 - ix. Hotel Starehe Ltd paid Kshs 3,000/= on June 28, 2021 for legal fees in Misc JR 077.
17. The court takes judicial notice that the Respondent acknowledges Hotel Starehe Ltd as being one of the assets of the Estate Eliud Njoroge Kuria the Applicant's father. It is evident from the annexures annexed to the supporting affidavit supporting the instant application that the hotel has made two payments in relation to legal fees for judicial review.
18. The Court also notes that the common thread in the receipts annexed by the Applicant is that they all refer to payment for legal fees for judicial review contrary to the Respondent's assertion that some



of the payments were made in relation to other transactions. The authenticity of the said receipts has also not been denied by the Respondent.

19. This court has also had due regard to the Ruling and Reasons of the Taxing Master dated October 4, 2022 and I note that the court acknowledges that the Applicant herein had attached Mpesa statements showing payments made to the Respondent herein amounting to the sum of Kshs 13,900/= which was deducted from the total sum awarded. I note that the Taxing Master does not make any reference to the receipts adduced before this court nor does she refer to the sum of Kshs 75,000/=.
20. Having said the above this court is convinced that the sum of Kshs 75,000/= as evidenced in the application before this court ought to be deducted from the amount awarded by the Taxing Master.
21. In light of the above I make the following orders;
 - i. The amount awarded in the Ruling and Reasons dated October 4, 2022 for Taxation on The Advocate Client Bill of Costs dated April 10, 2022 is hereby reviewed and varied.
 - ii. The bill of costs is thereby allowed at a sum of Kshs 79,700/=.
 - iii. The VAT shall be 12,752/=.
 - iv. The Total Advocate/Client Bill of Costs inclusive of the VAT is hereby allowed at Kshs 92,452/=(Kenya Shillings Ninety-Two Thousand Four Hundred and Fifty-Two)
 - v. I make no orders as to costs.
22. It is so ordered.

Dated, signed and delivered at Nairobi this 19th day of May, 2023

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J. CHIGITI (SC)
JUDGE

