



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muri Mwaniki & Wamiti Advocates v Gateway Insurance Company Limited (Miscellaneous Application 101 of 2019) [2023] KEHC 4154 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
MISCELLANEOUS APPLICATION 101 OF 2019**

**RK LIMO, J**

**MAY 11, 2023**

**BETWEEN**

**MURI MWANIKI & WAMITI ADVOCATES ..... APPLICANT**

**AND**

**GATEWAY INSURANCE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. Before the court, is a chamber summons application dated November 25, 2022 brought under rule 11(1) and (2) of the [Advocates \(Remuneration\) Order 2014](#). The application is a reference filed following the ruling of the taxing master dated November 15, 2022 arising from a bill of costs dated June 19, 2013. The advocate had filed the bill as Machakos High Court miscellaneous application No 126 of 2013 which was later transferred to this court and registered as Misc App No 101 of 2019.
2. The applicant is seeking the following orders;
  - a. That this honourable court be pleased to set aside the ruling of the Deputy Registrar, Hon Felistus Nekesa delivered on November 15, 2022 and any resultant certificate of taxation to the extent that it relates to the reasoning and determination pertaining to taxation of the following items in the advocate/client bill of costs dated June 19, 2013;
    - i. Item No 1
    - ii. Item No 2
    - iii. Item No 3
    - iv. Item No 4
    - v. Items No 6,20,31,39,43,49 and 71



- vi. Items No 8,9, 10, 12-18, 21-29, 32,33,3 6,37, 40, 41, 44, 45, 47, 52, 53, 56-60, 69, 72 and 76
  - vii. Items 19,30,38 and 42
  - viii. Items 34,35,50,51,54 and 55
  - ix. Items No 62,64,66,n74 and 80
  - x. Item No 68
  - xi. Items 82 and 84
- b. That this honourable court be pleased to tax the items of the bill of costs dated June 19, 2013 set out in 1(a-K) above.
- c. That in the alternative to prayer 2 above, this honourable court do remit the items of the bill of costs dated June 18, 2013 set out in 1 (a-k) above to another taxing officer for taxation with direction on the taxation,
- d. That the advocate/applicant be awarded costs of this application.
3. The application is based on the grounds listed on the face of the application which can be summarized as follows: -
4. The applicant's counsel feels the taxing officer erred in taxing item 1 of their bill at Kshs 25,200 on the basis of judgement value of Kshs 100,000 under schedule 7.
- The applicant contends that the Kshs 25,200 stipulated as party and party fees and the correct figure for advocate –client fee under schedule 7 is Kshs 37,800 as drawn in the Item 1 of their bill of costs.
5. He also faults the taxing master for taxing perusal fees at 150 when according to them under paragraph 2 part ii schedule v, the amount taxable is Kshs 50 per folio under item 2. He also faults the taxation of Item 3 at 336 contending that it should have been 168 per folio as stipulated in paragraph 2 part ii of schedule v. He also contends that Item 4 should have been taxed at Kshs 21 per folio.
6. The applicant has also opposed items No 8,9,10,12-18,21-29,32,33,36,37,40,41,44,45,47,52,53, 56-60, 69, 72 and 76 which were taxed off for lack of evidence i.e documentation. Counsel avers that the same should have been allowed as they were unopposed and has faulted the learned taxing master for failing to exercise her discretion by dispensing with production of such documentation.
7. The applicant has opposed items No 19, 30, 38, 42 and 77, which were in relation to court attendances. The taxing master capped court attendance at 15 minutes and taxed the same at Kshs 525/- counsel on the other hand states that court attendance was for one hour as ought to have been taxed at Kshs 1000/. Counsel also avers that item No 77 should have been taxed at Kshs 1000/- as per schedule 5 of *Advocates (Remuneration) (Amendment) Order 2014* because the court attendance lasted for one hour and the Advocates Remuneration Order stipulates Kshs 1,000 for one hour of attendance.
8. He faults the taxing officer for taxing off items Nos 34,35,50,51,54 and 55 without considering that the advocate had travelled to court notwithstanding that the matter was not cause listed or did not proceed.
9. He also takes issue with taxation of items 62,64,66,74 and 80 relating to making copies at Kshs 63 each contending that it should have been taxed at Kshs 21 per folio as per paragraph 2 part ii of schedule v.
10. He contends that the tasking of item 68 relating to journeys between Machakos and Nairobi at Kshs 2,520 was erroneous because according to him the journey from Machakos to Nairobi takes more than



1 hour 30 minutes because it is about 120 Km. In his view, it takes approximately 5 years to travel between the two towns which could have justified the item to be taxed at Kshs 10,500.

11. Counsel has also taken issue with items 82 and 84 relating to journeys taken to file the certificate of taxation and collect the sealed certificate of taxation stating that the same should not have been taxed off. That in the end, taxing master's decision resulted in a deficit of Kshs 51,450/- in the total award.
12. The respondent for the record filed no response to challenge this reference but that notwithstanding, this court shall determine it on merit.
13. The applicant is challenging taxation of the bill of costs dated June 19, 2013. The issues for determination are;
  - i. Whether the taxing master erred in principle while taxing item 1 on the bill being the instructions fees and doing so under the figures provided for party and party costs while this was an advocate-client bill of costs.
  - ii. Whether the taxing officer erred in principle in her taxation of items in the bill of costs.
14. Before delving into the merits of the application, the general principles governing interference with the exercise of the taxing master's discretion were restated by Mativo J in *KANU National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR where he referred to the case of *Visser v Gubb* 1981 (3) SA 753 (C) 754H – 755C as follows;

“It is trite that the court will not interfere with the exercise of the taxing master's discretion unless it appears that such has not been exercised judicially or it was exercised improperly or wrongly, for example, by disregarding factors which she should have considered, or considering matters which were improper for her to have considered, or she had failed to bring her mind to bear on the question in issue, or she had acted on a wrong principle. The court will however interfere where it is of the opinion that the taxing master was clearly wrong or in circumstances where it is in the same position as, or a better position than the taxing master to determine the very 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 or she was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

15. The applicant avers that the Deputy Registrar relied on the wrong charging schedule on the instructions fees. He averred that the taxing master taxed item 1 at Kshs 25,200/- which is provided for as the ordinary amount for a judgment value of Kshs 100,000/- under schedule 7. Counsel states that this value is provided for party and party bill of costs while this is an advocate-client bill of costs which ought to have been taxed at Kshs 37,800/-. In her ruling, the taxing master used her discretion and determined that the applicable schedule was schedule 5 of the *Advocates Remuneration Order* of 2006. She then proceeded to tax Item 1 under schedule 7 at Kshs 25,200/- and while doing so addressed the issue as follows;

“Item 1, I have perused Kitui CMCC 692/07 from the proceedings and ordinarily, judgment of Kshs 100,000/- would have attracted Kshs 25,200 under schedule 7. I opine that the said amount is sufficient thus the bill is taxed at Kshs 25,200/-.”



16. Costs of proceedings in the subordinate court are provided for under schedule 7 of the [Advocates Remuneration Order](#) of 2006. Part A provides for party and party costs while part B provides for advocates-clients costs. Paragraph 3 of part A provides as follows;

“In any suit or appeal by the nature of which no specific sum is sued for, claimed for, or awarded in the judgment (other than proceedings falling under paragraph 3 below); such costs as the court in its discretion but not less than Kshs 5,040 if undefended or unopposed and (subject to any special order for good reason connected with the nature and importance or the difficulty or the urgency of the matter) not to exceed Kshs 25,200.”

17. Part B on advocate and client costs provides as follows;

As between advocate and either the minimum fees shall be;

- a. the fees prescribed in A above increased by one-half or
- b. the fees ordered by the court increased by the one-half
- c. the fees agreed by the parties under paragraph 57 of this order, increased by one-half, as the case may be, such increase to include all proper attendances on the client and all necessary correspondence

18. The taxing master in light of the above provisions fell into error in taxing item 1 under part A (party and party costs) instead of part B which is in respect to advocate-client costs. This court on that basis, hereby sets aside the decision of the taxing master in item 1 and taxes it at Kshs 37,800.

#### **Items 2,3 & 4**

19. The applicant takes issue with the three items citing that the same ought to have been charged under paragraph 2, part ii of schedule 5, whilst this was the consideration that the taxing master took, counsel urges that the costs provided for were for taxation of perusal of each folio while the court indicated that costs provided for were for taxation for perusal of each document. I am in agreement with the taxing master as part ii of schedule 5 which provides costs for drawing and perusing at Kshs 50 which translates to different figures depending on the number of documents. There is no specification of each folio as argued by counsel.
20. The same applies for items 3 for drawing of memorandum of appearance and defence, which were taken as two documents. The costs for drawing is provided for as Kshs 168 as such, the two were taxed at Kshs 336/-.
21. Same as Item 4 on making copies, the costs provided is Kshs 21/- for each document and there were six documents in total.

#### **Items 6,20,31,39,43,49,71 & 78**

22. These items were in relation to journeys taken from Nairobi to Kitui and back.

On the items, the taxing master opined as follows;

“Items 6,20,31,39,43,49,71 and 78, I take note that the law firm is in Nairobi whereas the registry is in Kitui. I opine 3 hours is fair. The item is taxed at Kshs 5040/-.”

23. The taxing master ought to have taken into account the journey from Nairobi to Kitui Registry required that the advocate had to travel back so while I agree that Kshs 5,040 was fair, it is only one



way so a round trip would have justified the Item to be taxed at Kshs 10,080 going by paragraph 7 of part 11 schedule v.

**Items 8,9,10,12,18,21,29,32,33,36,37.....**

24. The items listed above were taxed off for lack of supporting evidence. The advocate faults the taxing master for failing to exercise her jurisdiction and ordering production of said documentation for determination of the said items.
25. Paragraph 13 A of the [Advocates Remuneration Order](#) provides for powers of taxing officer as follows;  
“For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.”
26. The taxing master officer, from the foregoing cannot be faulted for taxing off the items for want of supporting documents. The taxing officer was right in so doing.

**Items 19,30,38,42 &77**

27. These items were in respect to court attendances. The taxing master capped the proceedings at 15 minutes and taxed the items at Kshs 525/-.
28. Items 19 and 30 were registered as hearings which did not proceed whilst items 38 and 42 were listed as hearings which proceeded. Attendance is provided for under paragraph 3 of schedule 5 as follows;  
“ In ordinary cases per 15 minutes or part thereof Kshs 525/-  
a.  
In other cases the taxing officer may increase or diminish the above charges if for any special reason he sees it fit.”
29. The taxing officer cannot be faulted in the manner she taxed the above items because she applied the correct principles.
30. On item 77, the applicant avers that he attended the hearing in 2014. The date for attendance is not indicated on the bill of costs but the taxing master actually taxed the same at Kshs 1,000 as per schedule v of the 2014 [A.R.O](#) and not as contended by the applicant.

**Items 34,35,50,51,54 & 55**

31. The taxing master taxed off these items holding that the court proceedings did not support the dates upon which the claims (items) were based.  
The counsel ought to have proved attendance and his contention that the items should have been taxed regardless of whether the matter was listed on the cause list and/or proceeded is unfounded in my view.

**Item No. 68**

32. The item was on journey from Machakos to Nairobi which the taxing master taxed at Kshs 2,520/- on the premise that the journey took 1 hour 30 minutes. The court considered paragraph 7 of part ii schedule 5 on journeys from home which provides that where a lesser time than seven hours is used a figure of Kshs 1680/- per hour applies which totals to Kshs 2,520/- Counsel alleges that the journey took approximately 5 hours without providing of any evidence on the same. Counsel has also relied on schedule 5 of the 2014 [Remuneration Order](#) while he has not provided evidence that this attendance



was undertaken post 2014. My only reservation on the item is that the court ought to have taken into account that the journey would require counsel to travel back Nairobi after attending court in Machakos which would be (2520x2) totaling to Kshs 5,040/-.

**Items 82 and 84**

33. These items relate to journeys taken to file a certificate of taxation and to collect the sealed certificate of taxation. The taxing master taxed off the items on the ground that it would assume that the procedure would take place. Counsel on the other hand avers that taking out the certificate of taxation is a standard procedure.
34. While I agree that the subsequent step after taxation is procuring the certificate of taxation, the costs are yet to be incurred and taxing the same is speculative and unsafe. Either way, the remuneration order does not support it and the taxing master was correct.

In sum, in view of the items allowed and taxed the applicant's bill of costs is hereby in summary taxed as follows: -

Sub-total Kshs 105,245.00

Add VAT Kshs 16,839.20

Disbursements Kshs 825.00

Sub total Kshs 122,909.20

Less amount paid Kshs 48,073.00

Total Kshs 74,836.20

35. The applicant shall have half costs of this reference because he has partially succeeded.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 11<sup>TH</sup> DAY OF MAY, 2023.**

**HON. JUSTICE R. K. LIMO**

**JUDGE**

