



REPUBLIC OF KENYA



Gilani and Company Advocates v Ebrahim (Miscellaneous Application E012 of 2021) [2023] KEHC 19895 (KLR) (Family) (23 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E012 OF 2021
MA ODERO, J
JUNE 23, 2023**

BETWEEN

GILANI AND COMPANY ADVOCATES APPLICANT

AND

SALMA NAZIR HUSSEIN EBRAHIM RESPONDENT

RULING

1. Before this court is the Chamber Summons dated 1st July 2022 by which the Applicant Advocate Gilani & Company Advocates seek the following orders:-
 1. That the Honourable Court be pleased to set aside in entirety the Ruling of the Honourable C.W. Ng'ang'a, Deputy Registrar dated and delivered on the 17th day of June 2022, taxing the Advocate-client Bill of Costs dated 2nd February 2021 at Kshs.-549/= and refer the matter for fresh taxation before the Taxing Master.
 2. That the costs of this Application be provided for.
2. The summons were premised upon Sections 1A, 1B, 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya Order 50 Rule 6 of the *Civil Procedure Rules* 2010 Rule 11 of the Advocates (Remuneration) Order and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by Shezmin Riaz Gilani the Managing Partner of the firm of Gilani and Company Advocates.
3. The Respondent/Client Salma Nair Hussein Ebrahim opposed the application through the Grounds of opposition date 31st August 2022. The Respondent and Zulekha Ainashir Kara both filed Replying Affidavits dated 31st August 2022.



4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 5th December 2022 whilst the Respondent relied upon her written submissions dated 7th December 2022.

Background

5. The Applicant's firm of Advocates acted for the Respondent in Succession Cause No. 1050 of 2019. Thereafter the Advocates filed the Bill of costs dated 14th February 2021. The Bill was taxed and vide a ruling delivered on 17th June 2022, the Hon. Taxing Master taxed the Bill at Kshs.49,451.00.
6. The Taxing Master then deducted the deposit of Kshs.50,000 which had been paid to the Advocate by the client leaving a balance of Kshs.-549.00. In effect the taxing Master ruled that the Advocate owed the client a sum of Kshs.549.00.
7. Being dissatisfied by the decision of the Taxing Master the Advocate filed this reference to the High Court seeking to set aside in its entirety the decision of the Taxing Master. The Advocates prayed that the Bill be remitted for taxation before a different Taxing Master.

Analysis and Determination

8. I have carefully considered the chamber summons dated 1st July 2022, the Reply filed thereto as well as the written submissions filed by both parties.
9. The general principle is that the High Court ought not interfere with the decision of a Taxing Master unless there is shown to be an error of principle. The Taxing Officer is deemed to be more suited to the task of taxation and thus the High Court would only intervene in exceptional circumstances.
10. The High Court will not interfere with the decision of a Taxing Master merely on the grounds that the court itself would have award a different amount. The High Court will only interfere if it is shown that the amount awarded was manifestly excessive or manifestly low.
11. In *Nyangito & Company Adovates -vs-doinyo Lessos Creameries Ltd* [2014] eKLR Hon. Justice Odunga (as he then was) sated that circumstance under which the High Court may interfere with the decision of a Taxing Master are as follows:
 - 1) That 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 manifested excessive as to justify an inference that it was based on an error of principle;
 - 2) It would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the Remuneration Order itself. Some of the relevant factors to be taken into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved; the interests of the parties, the general conduct of the proceedings and any direction by the trial Judge;
 - 1) If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the Taxing Officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset a taxation because in its opinion."



12. The Applicants take issue with the amount awarded as Instruction Fees. They state that the Taxing Officer did not apply her discretion judiciously. In *Joreth Limited – vs- Kigano & Associates* [2002] E.A the court stated as follows:-

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgement or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking in to account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances. That is what CK Njai Esq did when he said:

“As we do not know the capital value of the property in dispute; one I believe is left to determine the matter on the general discretion donated to the Taxing Officer to tax a bill, based on the importance of the matter to the parties, complexity and the responsibility placed on shoulders of Counsel.” [own emphasis]

13. In the Ruling dated 17th June 2022 the Hon. Taxing Master justified the sum awarded as Instruction Fees as follows:-

“In the present case I will use my discretion and award a figure of Kshs.5,000 as instruction fees. I say so because in as much as the Applicants were instructed by the Respondent to Petition for grant, they never petitioned for the said grant. It is evident that the Respondent reached out to another firm of Advocates who petitioned for grant on their behalf.

14. The Taxing Master justified and explained her award for instruction fees. I find no evidence that the discretion was not judiciously exercised.

15. Similarly I do not find any error of principle committed by the Taxing Master in awarding the sums awarded.

16. There is a general caveat on judicial review of quantum of taxation unless there is a clear error of principle or the sums awarded are either manifestly high or low as to lead to an injustice. In *James v Nyeri Electricity*[1961] 492, it was stated at pages 492 – 293 as follows:-

“Where there has been an error in principle the court will interfere but questions solely of quantum are regarded as matters with which the Taxing Officers are particularly fitted to deal and the court will intervene only in exceptional cases. An example of such an exceptional case is that of *Haiders Bin Mohamed Elmandry and Others v Khadija Binti Ali Bin Salim* (4) 1956, 23 EA.C.A.313, in which an instructions fees of the 9,000/= was considered so excessive as to indicate that it must have been arrived at unjudicially or on erroneous principles.” [own emphasis]

17. Finally I find no merit in this reference. The same is dismissed in its entirety and costs are awarded to the Respondent.

DATED IN NAIROBI THIS 23RD DAY OF JUNE 2023.

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MAUREEN A. ODERO

JUDGE

