



Kitulu t/a Muema Kitulu & Co Advocates & Co Advocates v Gateway Insurance Co Ltd (Civil Miscellaneous Application 228 of 2016) [2023] KEHC 19113 (KLR) (Civ) (19 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19113 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION 228 OF 2016
AN ONGERI, J
JUNE 19, 2023**

BETWEEN

**MUEMA KITULU T/A MUEMA KITULU & CO ADVOCATES & CO
ADVOCATES APPLICANT**

AND

GATEWAY INSURANCE CO LTD RESPONDENT

RULING

1. The application coming for consideration in this ruling is the one dated August 3, 2022 seeking the following orders;
 - i. That this honourable court be pleased to extend time for filing reference herein to the taxation award dated December 21, 2017.
 - ii. That this honourable court be pleased to set aside or review the taxation award made on the December 14, 2017.
 - iii. That in the alternative this honourable court be pleased to directed that advocate/client bill dated May 24, 2016 be referred to another taxing master for taxation.
 - iv. That the costs of this application be in cause.
2. The application is supported by the affidavit of the applicant in which it is stated as follows;
 - a. The advocate/client bill herein sought a sum of kshs 167,168.32 which included advocates costs, disbursements, travelling costs, court fees 16% statutory VAT, and an increment of ½ the advocates costs in accordance with schedule VII Section B.



- b. When the award of taxation was made on December 14, 2017 the taxing master granted the advocate/applicant a sum of kshs 49,180.00.
 - c. Assuming the figure awarded ought to have included 16% VAT, an increment of ½ the advocates costs, the pleaded disbursement as well as court fees paid. It is therefore apparent that the figure granted for advocates costs was grossly below the statutory amount allowed by the *Advocates Remuneration Order* where final judgment was kshs 401,200/= in the contested suit subject of the advocate/client bill of costs.
 - d. The statutory minimum instruction fee alone ought to have been kshs 45,000/= even before other items were awarded yet the taxing master awarded kshs 49,180/= for the entire bill.
 - e. When the award of taxation was read, the taxing master merely stated the amount awarded without specifying the actual details item by item.
 - f. Although on the December 20, 2017 the advocate/ applicant applied for a copy of a ruling of the taxation master, no copy of the ruling was supplied necessitating protracted correspondence with the Deputy Registrar on the matter and culminating in the Deputy Registrar's curt letter dated February 4, 2019 directing the advocate/applicant to peruse the ruling in the court file.
 - g. In spite of the foregoing, the advocate/respondent lodged his notice of objection under Rule 11 (1) of the *advocates Remuneration Order* on June 20, 2018.
 - h. Attempts to settle this matter out of court as directed by the Late Hon Lady Justice Thurania Jaden have also proved unsuccessful after the client/respondent rebuffed the advocate/ applicant offer.
 - i. The present application is therefore justified in order to remedy the injustice visited upon the advocate/applicant herein in the ruling of the taxing master aforementioned.
3. The application is not opposed and therefore the Applicant is granted an extension of time to raise an objection to the bill of costs date December 14, 2017.
 4. The sole issue for determination in the reference is whether the bill of costs should be reviewed or returned to the taxing officer.
 5. I find that the only contested issue is the instruction fee where the taxing officer awarded 27,000 instead of ksh 45,000.
 6. I find that it is not in dispute that the value of the subject matter was Kshs, 401,200/=.
 7. I accordingly review the instruction fee and I award kshs 45,000 in accordance with the scale.
 8. I also award ½ advocates/client increment (ksh. 22,500) making a total of kshs 67,500 plus VAT 16% (7,200) and disbursements of 1,702 the total is 76,404.
 9. Judgment be and is hereby entered in favour of the advocate against the client in the sum of kshs 76,404 with interest at 14% from the date of taxation until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 19TH DAY OF JUNE, 2023.

A. N. ONGERI

JUDGE

