



Makhecha & Gitonga Advocates v Standard Group PLC (Miscellaneous Civil Application E093 of 2021) [2023] KEHC 19274 (KLR) (21 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E093 OF 2021**

PM MULWA, J

JUNE 21, 2023

**(IN THE MATTER OF ADVOCATE & CLIENT
COSTS ARISING FROM HCCC NO. 39 OF 2018)**

BETWEEN

MAKHECHA & GITONGA ADVOCATES APPLICANT

AND

THE STANDARD GROUP PLC RESPONDENT

RULING

1. The Applicant has filed the Chamber Summons dated September 23, 2022 in which it seeks to set aside and or vary the taxation and the cost of the reference be borne by the Client. The application is supported by the annexed affidavit of Wambugu Gitonga, an advocate practising as such in the advocate's firm sworn on September 23, 2022.
2. The gist of the application is the Bill taxed at Kshs 149,219/= on September 9, 2022. It is contended that the taxed amount is erroneous as to the fact that instruction fees were not ascertained and/or included and the taxing master failed to use the correct rule of Schedule 6 Part A of the *Advocates Remuneration Order 2014*. And that the taxing master failed to increase fees as prescribed under Schedule 6 B (a) and awarded costs that are manifestly too low to cause injustice to the applicant.
3. In opposing the application, the Respondent filed grounds of opposition. It averred that the taxing master did not err in law by holding that it is not possible to ascertain the value of the subject matter for the purpose of determining instruction fees as the damages had not been quantified. That the amount awarded to the applicant is fair and sufficient and urged the court not to interfere with the decision of the taxing master. It averred that with regard to the case of *Joreth Ltd vs Kigano and associates (2002) 1 EA 88* the court held - where the value of the subject matter of a suit could not be determined from the pleadings, judgement or settlement, a taxing master was entitled to use his discretion fee in assessing the instructions fee and in doing so the factors to be taken into account included the nature



and importance of the cause, the interest of the parties, the general conduct of the proceedings, any discretions of the judge and all other relevant circumstances.

4. The court directed the application to be canvassed by way of written submissions, on January 18, 2023 the applicant informed the court it had filed submissions however the same were not in the court file at the time of preparing the ruling. The respondent indicated to the court it was not willing to file submissions.

Analysis and determination

5. I have considered the application, the affidavit and the grounds of opposition. The issue for determination is whether the taxing master erred in taxing the Bill of Costs dated March 1, 2021 at Kshs 149, 219/=.
6. The principles for setting aside the tax masters' decisions are set out in the case of *First American Bank of Kenya vs Shab & Others (2002) EA 64*, where the court held that;

' The court cannot interfere with the taxing officer's decisions on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle and that it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors.'
7. The taxing master identified that since the matter was filed in 2018 the applicable scale for determination was Schedule 6 of the Advocate's Remuneration Order (ARO) 2014.
8. The taxing master proceeded to state that the suit filed sought orders for general damages, aggravated or exemplary damages, costs of the suit, and interest on the damages awarded. In the absence of a judgment the applicant estimated the award awardable to the client and the taxing master held the amount quoted was higher than what is provided in the ARO 2014 and awarded Kshs 75,000/= as instruction fees, which was raised by ½ and taxed at Kshs 112,500/=
9. To start with the matter having been filed in the year 2008 the taxing officer did not err in using the Advocates Remuneration Order 2014.
10. The applicant submits the taxing of instructions fees at Kshs 75,000 was erroneous and urged the court to exercise its discretion and interfere with the decision.
11. In *Kipkorir Tito & Kiara Advocates vs Deposit Protection Fund Board [2005] eKLR* it was held:

' On reference to a Judge from the Taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer erred in principle in assessing the costs.'
12. The law allows the taxing officer to exercise its discretion judiciously while assessing the Bill of Costs where the value of the property is unknown. The taxing master opined that in the absence of a judgment and the nature of the claim which was a defilement case it was not possible to determine the suit value through the pleadings and applied Schedule 6 A paragraph 1 where she considered the current suit as other matters.



13. In *Joreth Ltd vs Kigano & Associates* [2002] 1 EA 92, the court stated;

' 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, judgment 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 into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances

14. The taxing master is permitted to exercise her discretion when the subject matter is not known or cannot be determined by either the pleadings, judgment and or settlement. In the instant case, the applicant has an issue with the instructions fees as assessed by the taxing master. The taxing master indicated it was difficult to determine the subject value as the same was not determined by either the pleading, judgment or any settlement and adopted Schedule 6 A Paragraph 1 under other matters. She proceeded to increase by half (1/2) the instruction fees.
15. The taxing master took the initiative to explain how the amount taxed was arrived at in the absence of the value of the subject matter. I thus find the taxing master decision was not arrived at using the wrong principles.
16. Having considered the ruling being contested, this court finds there was no reason advanced by the applicants for the interference of the taxing master's decision. The applicant has not demonstrated the error made by the taxing master as the value of the subject matter was unknown, and the taxing master exercised her discretion.
17. For the reasons above this court finds the Chamber Summons application dated September 23, 2022 is unmerited. The same is dismissed with costs to the respondent.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU ON THIS 21ST DAY OF JUNE 2023.

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P.M. MULWA

JUDGE

In the presence of:

Kinyua – court assistant

Mr. Gathuri - for applicant/advocate

Mr. Chebwon - for respondent/client

