



Muri Mwaniki & Wamiti Advocates v Kenya Orient Insurance Limited (Miscellaneous Application 17 of 2017) [2023] KEHC 19087 (KLR) (14 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS APPLICATION 17 OF 2017
LM NJUGUNA, J
JUNE 14, 2023**

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES APPLICANT

AND

KENYA ORIENT INSURANCE LIMITED RESPONDENT

RULING

1. The applicant herein filed the instant application dated August 05, 2022 and wherein he seeks for orders as enunciated on the face of the application.
2. The application is premised on the grounds on its face and it's supported by the affidavit sworn by Martin G Mwaniki and wherein among other issues, the applicant who has been in conduct of Embu Chief Magistrates Civil Suit No 184 of 2011 subject of the reference herein, faulted the taxing officer for having failed to exercise her discretion properly and misdirecting herself in principle in the taxing of various items in the Bill of Costs relating to drawing, attendances, letters and making of copies. The applicant has urged this court to be pleased to tax the said items in the Bill of Costs dated January 24, 2017 or in the alternative, the same be remitted to another Taxing Officer with directions on taxation. The chambers summons is supported by the annexed affidavit sworn on August 05, 2022.
3. The respondent despite having been served, did not file any response to the application and as such, the same is unopposed.
4. The Deputy Registrar via a ruling delivered on October 18, 2021, taxed the bill of Costs at Kes 111,221.00. It is this determination that has provoked the application herein whereby the applicant has prayed that this court be pleased to tax the said items as listed in the application and in the alternative, remit the items of the Bill of Costs dated 24.01.2017 to another taxing officer for taxation with directions on the taxation.



5. I have considered the application herein and it is my considered view that the main issue for determination is whether the application is merited.
6. It is trite that this court will only interfere with the decision of a taxing officer in cases where there has been shown to be an error of principle. In *Republic Vs Ministry of Agriculture & 20 Others Ex-Parte Muchiri W' Njuguna* [2006] eKLR, Ojwang J. (Retired) stated as follows:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other...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 manifestly excessive as to justify an inference that it was based on an error of principle.”
7. Also in the case of *PZ Cussons East Africa Limited Vs Kenya Revenue Authority*, supra, the Judge cited the decision of the Court of Appeal in *Thomas James Artur Vs Nyeri Electricity Undertaking* [1969] EA 64 at page 69 that: -“Where there has been an error in principle, the court will therefore interfere, but questions solely of quantum are regarded as matters which the Taxing Officers are particularly fitted to deal and the court will interfere only in exceptional circumstances.” [See the Court of Appeal in the case of *Kipkorir, Titoo & Kiara Advocates Vs Deposit Protection Fund Board* NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR].
8. The applicant stated that the Deputy Registrar misdirected herself by taxing item 1 at Kes 42,000.00 on the basis of Kes 500,000.00 as the value of the subject matter in the suit. That the Taxing Officer relied on the value of Kes 500,000.00 being the insured value of the subject motor vehicle as was cited in one of the correspondences by the parties. It was the applicant’s submissions that the same was wrong as the subject of the suit was a personal injuries claim whose liability was in the sum of Kes 3,000,000.00.
9. Part II of Schedule 5 of the *Advocates Remuneration Order* states that:

Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule.
10. Upon perusal of the pleadings, it is my considered view that the suit was a personal injury claim wherein the respondent was seeking to be absolved from the liabilities therein. As such, the appropriate Schedule ought to be Part B of Schedule 7 on Costs of proceedings in Subordinate Courts.
11. The applicant contended that the Deputy Registrar misdirected herself in principle in the taxing of items Nos 3, 54 and 95 relating to drawing without regard to the correct size and number of folios as provided under paragraph 17 of the ARO and calculated according to the exhibited documents in the applicant’s bundle of documents for the said items that were thus drawn to scale as provided for under paragraph 2 part II of schedule V.
12. That provision stipulates;
 17. A folio shall for all purposes of this Order be deemed to consist of 100 words and any part of a folio shall be charged as one folio. A sum or quantity of one denomination stated in figures



is to be counted as one word: eg. “£25,564 16s 8d.” is to be counted as three words, and “254 feet 11 inches” is to be counted as four words.

13. The above definition is necessary in taxing costs payable for drawing pleadings, making copies of documents and perusing documents. A perusal of the disputed items shows that the Deputy Registrar applied the proper schedule but disregarded the foregoing definition of the word folio. The same to be taxed taking into account the sizes and number of folios.
14. That the learned Deputy Registrar erred in law and misdirected herself in principle in taxing off items Nos.4, 9, 65, 78 and 118 relating to drawing of pleadings, notices and submissions without due regard to the correct size and number of folios as provided for under paragraph 17 of the Advocates Remuneration Order and calculated according to the exhibited documents in the applicant’s bundle of documents as provided for under paragraph 2, Part II of Schedule V. A perusal of the disputed items shows that the items 4,9,65 and 118 the Deputy Registrar applied the proper schedule but disregarded the definition of the word folio. The same to be taxed taking into account the current sizes and number of folios.
15. For item Nos. 5, 10, 15, 20, 23, 25, 27, 32, 36, 40, 44, 52, 56, 60, 62, 66, 73, 77, 79, 84, 86, 88, 94, 103, 107, 110, 113, 119, 121 and 123 relating to making copies. That the learned Taxing Officer with no reasons except for item 5 taxed the items yet they were not supported. That as a matter of common notoriety copies are done in triplicate for filing, the court and a copy for the opposing party while letters are done in duplicate, the original to the addressee and a file copy for the addressor. The same ought to be taxed in reference to paragraph 2 part II of schedule V. The same to be taxed taking into account the current sizes and number of folios.
16. Items Nos. 7, 12, 17, 30, 42, 48, 50, 58, 68, 71, 82, 90, 97, 101, 105, 115, 125, 127, 130, 132, 134 and 136 relating to journeys from home. That all the items were taxed off except for item 7 that was taxed at Kes. 1500. Item 12 was specifically taxed off by the Taxing Master for the reason that attendance at the registry and the journey from home ultimately served the same purpose. The remuneration order provides that:

For every day of not less than seven hours employed in travelling 15,000 ; Where a lesser time than seven hours is so employed, per hour 2,500.
17. In this regard, the pleadings filed herein shows that the applicant is based in Nairobi. Unless there is evidence to the contrary, a journey to and from Nairobi would ordinarily take roughly three hours depending on the traffic. The amount of Kes. 8,400.00 charged is reasonable.
18. For items Nos. 29, 41, 49, 57, 67, 70, 74, 81, 89, 96, 100, 104, 124, 126, 129, 131 and 135 relating to court attendances. That items nos. 29, 41,49,81,96 and 100 were taxed at Kes. 525 except for item no. 104 which was taxed at Kes. 4,200 for court hearings that did not proceed. Item Nos. 74 and 89 were taxed off at Kes.525 whereas items nos. 70 (taxed at 2,100) and 131 taxed off for mentions. Item Nos. 57, 67,124,126 and 135 were invariably and inconsistently taxed as well figures below the prescribed scale. It was contested that the Taxing Master did give reasons for the varied taxation and/or taxing off the said items. The court has perused the record and finds that the following items 29, 57,67,70,74,81,89,96,100 and 104 should be taxed in reference to paragraph 3 part II of schedule V.
19. For item No. 39, which relates to the opinion to the client/respondent which was taxed off. It was submitted that the learned Taxing Master erred in law and misdirected herself in principle in taxing off the said item on the basis that it was received by the client when indeed the letter enclosing the opinion was exhibited and was referred to in subsequent correspondence.



20. Schedule 5, Part II para 6 states that:

For formal written opinion, such fee as may be reasonable in the circumstances having regard to the same consideration as set out above for the assessment of instructions, but not less than 35,000.00.

21. In the case herein, I have perused the said letter dated 29.01.2014 and I hold the view that the same is a letter hence not an opinion. As such, the same should be taxed in reference to paragraph 5, Part II of Schedule V.

22. In the end, the orders that are commendable to me are as follows:

- i. That the Bill of Costs herein is hereby remitted back to be taxed afresh by a different taxing officer as per the directions given hereinabove.
- ii. No order as to costs.

23. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 14TH DAY OF JUNE, 2023.

L. NJUGUNA

JUDGE

