



Corporate Insurance Co Ltd v Kangethe & Mola Advocates (Miscellaneous Civil Application 179 of 2019) [2023] KEHC 21647 (KLR) (1 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21647 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION 179 OF 2019
DO CHEPKWONY, J
AUGUST 1, 2023**

BETWEEN

CORPORATE INSURANCE CO LTD APPLICANT

AND

KANGETHE & MOLA ADVOCATES RESPONDENT

RULING

1. This Ruling relates to a Reference filed by way of Chamber Summons application dated February 23, 2022 by the Applicant, corporate insurance Co Ltd which seeks the following orders:
 - a. That the Honourable court be pleased to vacate and set aside in its entirety the Ruling of Honourable W. Rading, Deputy Registrar dated and delivered on the February 20, 2020 allowing the Advocate- client Bill of Costs dated April 27, 2019
 - b. That the costs of this application be provided for.
2. The Application is supported by the grounds set out on its face and replicated in the Supporting Affidavit of Dr. Wilfred Akhonya Mutubwa sworn on February 23, 2022.
3. According to the applicant, the Ruling of the Bill of Costs in question was delivered on February 20, 2020, wherein the said Bill of Costs was allowed as drawn. The Applicant has averred that the Deputy Registrar misdirected himself by allowing the Bill of Costs as drawn instead of interrogating and taxing every item. The Applicant contends that the Deputy Registrar taxed the Bill of Costs at Kshs 503,215.20, which amount exceeded the Kshs 413,713 awarded in the judgment of the trial court which was inordinately high and unjust to the client, and therefore ought to be interfered with.
4. Also, the Applicant contends that the Deputy Registrar erred by taxing some items such as Item No. 43, 44, 47, 48, 39, 40, 52, 53, 56, 58 and 59 twice, which amounts to unjust enrichment of the Respondent . In respect to Items No. 7, 8, 30, 31, 55, 60, 66, 67, 68, 78, 89, 95, 102 and 103, the



Applicant holds that the taxing officer allowed them without proof of the original receipts to verify the amounts for disbursements and travel.

5. The Applicant further states that the taxing officer allowed Items Number 1, 54, 148 and 139 which were manifestly high which was unfounded in that he applied Schedule 5 of the *Advocates Remuneration Order* instead of Schedule 7 thereof by ascertaining that the Advocate had complied with Paragraph 22 of the *Advocates Remuneration Order*.
6. It is the Applicant's contention that the Advocate had served upon the client with a fee note dated March 11, 2013 whereby the client had made payment on March 12, 2019 and thereafter the Advocate issued the Bill of Costs in question claiming further fees. The Applicant contends that the Advocate was therefore bound by Section 45 of the *Advocates Act* of the agreement made to the client being the fee note dated March 11, 2013, hence the Advocate is estopped from claiming further fees. The Applicant argues that the application should be allowed as prayed.
7. Although the application was unopposed, the court is still under obligation to consider the application on its merits in view of the nature of prayers sought so as to avoid any injustice upon either party.

Determination

8. It is trite law that this court cannot interfere with the decision of the Deputy Registrar unless it was based on the wrong principles or that the fees was manifestly excessive or low or failed to take into consideration relevant factors. This was the decision in the case of *First American Bank Ltd v Shah & another* [2002] 1 EA 64, where the court held that;

“This 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 so manifestly excessive as to justify an inference that it was based on an error of principle... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors...”
9. This position was reiterated by the court in the case of *Kipkorir, Tito & Kiara Advocates Vs Deposit Protection Fund Board* [2005] Eklr where the Court also observed that;

“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.”
10. Having carefully read through the reference and grounds upon which the same is premised, this court finds that the grounds raised by the Applicant on the errors made by the Taxing Officer are substantive and indeed warrant the interference of this court. This is because the Taxing Officer was under obligation to analyze each and every item in the Bill of Costs so as to either allow it or tax it in accordance to the law. A general look at the Bill of costs, shows that it is evident that some items have been taxed twice which is an error in principle. It is only prudent and diligent that the Taxing Officer ought to have verified the items for disbursements and travel so as to arrive at a justified decision. It is the court's view that the amount awarded was manifestly excessive, erroneous in law and principle hence the ruling delivered on February 20, 2020 ought to be set aside.
11. It is trite law that this court lacks the jurisdiction to reassess the Bill of Costs as its duty is only limited to remitting the Bill of Costs back to a Deputy Registrar for fresh taxation.



12. Therefore, the court allows the Chamber Summons dated Application February 23, 2022 as prayed as follows:-

- a. The ruling of the Honourable Deputy registrar dated and delivered on February 25, 2020 be and is hereby vacated and set aside.
- b. The Bill of Costs dated April 27, 2019 be and is hereby remitted to another Deputy Registrar for fresh taxation.
- c. Costs to the Applicant.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 1ST DAY OF AUGUST, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Maritim holding brief Mr. Mutubwa counsel for respondent

Court Assistant - Nancy

