



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO. E085 OF 2021

DUKE O. OMWENGA T/A

OMWENGA AND COMPANY ADVOCATES.....APPLICANT

-VERSUS-

THE MONARCH INSURANCE COMPANY LTD.....RESPONDENT

RULING ON REFERENCE

The reference before me arises from the Ruling which the learned taxing officer delivered on 12th August 2021.

1. The Advocate/Client Bill of Costs had been drawn in the sum of Kshs 499,685/=, but it was then taxed and allowed in the sum of Kshs 40,116.50.

2. In challenging the ruling by the taxing officer, the Applicant submitted that the process of taxation had been conducted without due regard to the fundamental principles, guidelines and practice directions which ought to govern the taxation of Advocate/Client Bill of Costs.

Attendance Fees

3. The Applicant submitted that pursuant to paragraph 5 of **Schedule 7A** of the **Advocates (Remuneration) (Amendment) Order, 2014**, the advocate was entitled to charge for necessary attendances at the registry or at the Court.

4. Contrary to that assertion, paragraph 5 makes reference only to attendances either in Court or in chambers.

5. Accordingly, the taxing officer was right to have disallowed items **39** and **40**, as they relate to attendances at the Registry.

Travelling Expenses

6. The Advocate submitted that the travelling expenses should not have been taxed-off because they were incidental to the suit.

7. The advocate cited the decision in **KANU NATIONAL ELECTIONS BOARD & 2 OTHERS Vs SALAH YAKUB FARAH (2018) eKLR**, to support his position. In that case, it was held as follows;

“The discretion vested in the Taxing Master is to allow costs, charges and expenses as appear to him to have been necessary and proper; not those which may objectively attain such qualities, and that such opinion must relate to all costs reasonably incurred by the litigant, which also imports a value judgement as to what is reasonable. The discretion to decide what costs have been necessarily and properly incurred is given to the Taxing Master and not to the Court.

This discretion must be exercised judicially, in the sense that the Taxing Master must act reasonably, justly and on the basis of sound principles with due regard to the circumstances of the case.”

8. First, it is noteworthy that the person upon whom the discretion is vested is the Taxing Master; and no the Court.

9. Therefore, unless it is shown that the Taxing Master had not exercised his or her discretion judiciously, the Court would not interfere with the decision of the said Taxing Master.

10. Secondly, as expressly stated in the authority cited above, the decision of the Taxing Master;

“..... must relate to all costs reasonably incurred by the litigant”

11. Thirdly, the person who incurred the said expense must demonstrate that the costs have necessarily or properly incurred.

12. In her ruling, the Taxing Officer herein held as follows;

“Travelling expenses are actual costs incurred, which ought to be proven by way of production of receipts. In the absence of those receipts, items 68-79 are each taxed off.”

13. In my considered opinion, the words of the Taxing Officer mirror the legal position as expounded by the Court in **KANU NATIONAL ELECTIONS BOARD & 2 OTHERS Vs SALAH YAKUB FARAH (2018) eKLR.**

14. In the absence of receipts, the Applicant failed to prove that the travelling expenses were incurred. Therefore, the Taxing Officer was right to have taxed-off the items **68 – 79**.

15. Even assuming that the said expenses appeared to be objectively reasonable, that would not alter the fact that the Applicant failed to demonstrate that he had incurred the same.

Costs on the Reference

16. As the Applicant submitted, it is trite law that costs follow the event, ordinarily.

17. The reference herein is unsuccessful. Ordinarily, therefore, the Applicant ought to have been ordered to pay the costs of the said reference. However, as the Respondent did not participate in the reference, I decline to award it costs.

18. Each party will meet his own costs of the reference.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 8TH DAY OF FEBRUARY 2022

FRED A. OCHIENG

JUDGE