



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. CIVIL APPLICATION NO. E086 OF 2021**

**DUKE O. OMWENGA T/A**

**OMWENGA AND COMPANY ADVOCATES.....APPLICANT**

**-VERSUS-**

**THE MONARCH INSURANCE COMPANY LTD.....RESPONDENT**

**RULING ON REFERENCE**

On 12<sup>th</sup> August 2021 the Taxing Officer taxed the Advocate/Client Bill of Costs in the sum of Kshs 401,252/20. The Advocate was dissatisfied with the said ruling, and lodged a reference therefrom.

1. In essence, the Advocate has complained about 2 substantive issues.

**Court Attendance Fees**

2. The Items 26 and 27 were in respect claims for attendances at the Court Registry to file a Plaintiff and a Reply to Defence with a Defence to the Counterclaim.

3. The reason given by the Taxing Officer for rejecting those claims is that they were not provided for in the Remuneration Order.

4. The Taxing Officer did not reject the claims because the Advocate had not attended at the Registry. Secondly, the Taxing Officer did not reject the claims because the same were unreasonable.

5. In my considered opinion, the learned Taxing Officer was right to reject the claims, because under **Schedule 7A of the Advocates (Remuneration) (Amendment) Order, 2014**, the only attendances for which provision was made, are those either in Court or in Chambers.

**Travelling Expenses**

6. The Applicant submitted that the charges for Travelling Expenses were incidental to the suit. He also said that the amounts claimed were reasonable expenses which the advocate had incurred.

7. In her Ruling, the Taxing Officer held that Travelling Expenses were those that had actually been incurred.

8. Clearly, until that stage the Applicant was reading from the same page as the Taxing Officer.

9. In the case of **KANU NATIONAL ELECTIONS BOARD & 2 OTHERS Vs SALAH YAKUB FARAH (2018) eKLR** the Court held that the Taxing Officer had the discretion to allow costs, charges and expenses which, appear to him/her to have been necessary or proper. The Court said that;

***“The discretion to decide what costs have been necessarily or properly incurred, is given to the Taxing Master and not to the Court.”***

10. If indeed the advocate had incurred an expense, as suggested herein, he should have had no difficulty in making available receipts for the same.

11. I find that the Taxing Officer was right to have disallowed the claims for Travelling Expenses.

**Costs of the Reference**

12. Costs ordinarily follow the event. Therefore, the Applicant ought to have been ordered to pay costs of the reference. However, as the Respondent did not play any role in the said reference, I order that each party will pay his own costs of the reference.

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

**FRED A. OCHIENG**

**JUDGE**