



**Nairobi City Water & Sewerage Company Limited v Koceyo &
Company Advocates (Civil Miscellaneous Application E438 of 2021)
[2024] KEHC 14184 (KLR) (Civ) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS APPLICATION E438 OF 2021

AN ONGERI, J

NOVEMBER 8, 2024

BETWEEN

NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED APPLICANT

AND

KOCEYO & COMPANY ADVOCATES RESPONDENT

RULING

1. The client/applicant filed the reference dated 20/6/2024 against the ruling delivered by the taxing master on 29/3/2022 arising from the bill of costs dated 2/9/2021.
2. The reference is seeking for the following orders;
 - i. That the ruling by Hon. L. A. Mumassaba Deputy Registrar delivered on 29th March 2022 of this Court on the taxation of the Advocate-Client Bill of costs dated 2nd September 2021 be set aside and/vacated as relates to item 1 on instructions.
 - ii. That the Deputy Registrar be restrained by an order of this Honourable Court from issuing a certificate of costs and if one has been executed the same be expunged from the record.
 - iii. That this Honourable Court be pleased to assess the said item 1 of the Respondent's bill based on Kshs. 253,288.00 as opposed to Kshs. 1,248,650.00 used by the Taxing officer.
 - iv. That based on the said value of the of the suit before the Water Appeals Board, the instruction fees be assessed in the sum of Kshs. 65,00.00.
 - v. That the taxing Officer failed to consider the Applicant's submissions dated 7th February 2022.
 - vi. That this Honourable Court do make any additional orders as the demands of justice dictate.



- vii. That the costs of this Application be provided for.
3. The reference is based on the following grounds;
- i. The Taxing Officer failed to apply the correct legal principles in taxing the bill of costs.
 - ii. The Taxing Officer failed to consider the provision of Schedule IX (2) (a) of the Advocates Remuneration Order, 2013.
 - iii. The Taxing Officer failed to consider the memorandum of response, replying affidavit and considered a document which was not signed by the Applicant.
 - iv. The Taxing Officer totally failed to factor in provisions of Schedule IX (2) (a) of the Advocates Remuneration Order, 2013 as the matter had been filed the same year.
 - v. The learned Taxing Officer misapprehended and misapplied the law and principles of taxation in the nature of the suit giving rise to the taxation and failed to apply correctly the principles and formula provided for assessing the instruction fees.
 - vi. The learned Taxing Officer erred in law and fact by arriving at an improper determination on the value of the subject matter of the Suit and when she failed to assess the instruction fees on the basis of pleadings filed before the Water Appeals Board Appeal No.8 (WS) of 2013.
 - vii. The learned taxing officer failed to make a finding that the value of the subject matter was Kshs.253,238.00 as indicated on paragraph 16 of the memorandum of response.(Page 36 herein).
 - viii. The Taxing officer erred in principle by arriving at an erroneous decision on the taxation for reason of her failure to give due and/or proper consideration to the relevant factors of the case including but not limited to the:-
 - a. nature and importance of the Suit giving rise to the taxation
 - b. interest of the parties
 - c. value of the subject matter
 - d. public interest in the subject matter
 - e. importance and complexity of the matter
 - f. conduct of the proceedings
 - g. labour expended and the responsibility undertaken by the Applicant in the matter
 - h. and all other relevant circumstances.
 - ix. The learned Taxing Officer misapprehended and grossly misdirected herself on the principles of law enunciated in the authorities cited by the parties and/or misapplied them in the taxation herein thereby arriving at an erroneous decision.
 - x. In all the circumstances of this matter the said decision of the learned Taxing Officer is premised on the wrong principles of law and/or is without basis in law, unreasonable and unjust.
 - xi. It is in the interest of Justice that the orders sought be granted.



4. The reference is supported by the affidavit of DICKSON KHISA sworn on 20/6/2024. In it he stated that the on 29/3/2022 the court delivered a ruling in this matter and the applicant being dissatisfied with it filed this instant application.
5. That the taxing officer failed to consider the memorandum of response, replying affidavit filed by the applicant before water appeal board and only considered a document which was not signed by the applicant.
6. He averred that the taxing officer failed to hold that the value of the subject matter was Kshs. 253,288. He failed to factor in provisions of Schedule IX (2) (a) of the Advocates Remuneration Order, 2013. The taxing officer misapprehended and misapplied the law and principles of taxation in the nature of the suit.
7. The advocate client opposed the reference vide a replying affidavit by Titus Koceyo dated 2/7/2024. In it he deponed that the taxing officer was correct in assessing item 1 of the Bill of Cost dated 2/9/2021 to Kshs. 192,397.50 based on the value of the subject matter which was the total outstanding water bill of Kshs. 1,248,650.
8. The advocate client stated that instruction fees are calculated from the valued of the subject matter. The taxing officer provided a proper computation of the instructions fees in the said ruling delivered on 29/3/2022 and the applicant cannot purport that the same were baseless.
9. The parties filed written submissions as follows; the applicant submitted that the value of the subject matter is Kshs. 253,299. The taxing officer ought to have taxed the bill of cost based on the specific instructions issued to the client. The taxing officer failed to exercise her judicial discretion which is guided by principles.
10. The applicant submitted that the taxing officer taxed item number 2 based on the subject matter and since the same could not ascertained from the pleadings, the taxing officer exercised her discretion and taxed the item at Kshs. 192,397.50.
11. That the applicant did not place any information before the taxing officer to help in the determination of the party/party costs. Therefore, the taxing master ought to have awarded the advocates a sum of Kshs. 192,397.50 as the instruction fees based on the Advocates Remuneration Order of 2014 as the bill refers to a period between 2013 and 2014.
12. In the alternative the respondent submitted that the taxation of a bill of costs ought to be calculated from the value of the subject matter which is discerned from the pleadings, judgement or settlement and that the taxing officer may exercise discretion in awarding the same. the respondent argued that the taxing officer provided a proper computation of the instruction fees in the ruling dated 29/3/2022.
13. The respondent submitted that the subject suit was not complex considering the nature of the orders sought by the claimant. The general conduct of the proceedings were direct as demonstrated by the filed pleading and the taxing officer's ruling was guided by correct legal principles and based on law.
14. The sole issue for determination in this is whether item one of the bill of costs was taxed to scale.
15. I find that the taxing officer found that the value of the subject matter was ascertainable from the pleadings and in particular from the letter dated 6/2/2014.
16. I have perused the letter dated 6/2/2014 and it clearly states that the total outstanding bill was 1,248,650.20 and I find that the said figure is the the value of the subject matter.



17. It is therefore not true that the correct value of the subjected matter is kshs.253,288 as indicated in paragraph 16 of the memorandum of claim.
18. I find that the reference has no merit and I dismiss it and uphold the certificate of taxation.
19. Each party to bear its own costs of this reference.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

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A. N. ONGERI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

