



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC. REFERENCE NO. 51 OF 2019**

**IN THE MATTER OF THE ADVOCATES ACT**

**AND**

**IN THE MATTER OF TAXATION OF COSTS BETWEEN PARTY AND PARTY**

**BETWEEN**

**JOHN GITONGA ARITHI.....PLAINTIFF/RESPONDENT**

**AND**

**KINORO TEA FACTORY COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**KTDA MANAGEMENT SERVICES LIMITED.....2<sup>ND</sup> DEFENDANT/1<sup>ST</sup> APPLICANT**

**KENYA TEA DEVELOPMENT AGENCY LIMITED.....3<sup>RD</sup> DEFENDANT/2<sup>ND</sup> APPLICANT**

**ALOISE MUGENDI MBIJIWE.....4<sup>TH</sup> DEFENDANT/APPLICANT**

**RULING**

**Background**

1. By a ruling dated, the Respondent's applications dated 9<sup>th</sup> January 2017 and 12<sup>th</sup> January 2017 as well as the suit herein were dismissed with costs to the Respondents.
2. Subsequently, the Applicants filed separate bills of costs dated 28<sup>th</sup> August, 2017. The bills of costs were argued by way of written submissions.
3. By a ruling dated 31<sup>st</sup> October, 2018, the Taxing Master ruled that the 2<sup>nd</sup> to 4<sup>th</sup> Respondent's bills of costs were unnecessary and struck them out, the taxing Master the proceeded to tax the 1<sup>st</sup> Defendant/Respondent's bill of costs in the sum of Kshs. 769,715/- which sums was ordered as costs for all the Defendants.

**Summons**

4. By a chamber summons dated 05<sup>th</sup> June, 2019 and filed on 06<sup>th</sup> June, 2019, the Applicant challenges the Taxing Master's decision on items 1 (Instructions fees) and advocate's travelling costs on items 18, 24, 26 and 36 on the ground that they are exaggerated.
5. The application is opposed on the basis of a replying affidavit sworn on 13<sup>th</sup> November,2020 by Susan Musyoka, the 1<sup>st</sup> Respondent's Head of Legal and Regulatory Affairs in which she contends that the bills of cots was taxed to scale and that the advocate's travelling costs are reasonable.

6. I have carefully considered the reference in the light of the affidavits on record. I have also considered the Taxing Master's ruling dated 22<sup>nd</sup> May, 2019 giving reasons for taxation of the objected items.

### **Analysis and Determination**

7. The principles upon which this Court may interfere with the Taxing Master's decision are well settled. The Court will only interfere where there has been an error in principle and the Court will not interfere on quantum as that is at the discretion of the taxing master. (See **D. Njogu & Company Advocates v Panafcon Engineering limited (2006) eKLR.**)

8. It is worthy to note that the matter was concluded at an interlocutory stage and whereas the Taxing Master found that the Applicant's claim related to what was described as *a simple election of a director of an electoral area*, the Taxing Master nevertheless awarded Kshs. 300,000/- as instructions fees.

9. Schedule 6 of the Advocates Remuneration Order 2014 and more particularly subsection (b) provides for costs of Kshs. 75,000/- in a defended suit whose value is between 0 and 500,000. The subject matter in this suit was undeterminable and costs payable is therefore Kshs. 75,000/-. The basis upon which the Taxing Master enhanced the sum on instructions fees to Kshs. 300,000/- has not been explained.

10. Concerning travelling costs, Respondent asked for Kshs. 5,000/ on item 18 and Kshs. 15,000/- each on items 24, 26 and 35. The Taxing Master awarded Kshs. 7,000/- on each item thereby enhancing the sums on items 18.

11. The court record confirms court attendance on the dates the travel costs are sought. The record particularly reveals that the matter was heard on 01.02.2017 and 09.02.2017 and I find that the sum of Kshs. 7,000/- on items 24 and 26 justified. The sums on item 28 and 35 when directions were given and ruling delivered respectively are reduced to Kshs. 3,000/- on each of the two items.

12. In the case of **Premchand Raichand Limited & Another Vs Quarry Services of East Africa Limited and Another [1972] E.A 162.** the Court of Appeal held THAT:

**“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, and 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.”**

13. Having considered the discretion given to the Taxing Officer in taxation matters under Section 27 of the Civil Procedure Act, 2010, I am satisfied the Applicant has made out a case for interference with the Taxing Master's decision on items 1, 28 and 35.

14. Accordingly, the chamber summons dated 05<sup>th</sup> June, 2019 and filed on 06<sup>th</sup> June, 2019 is allowed in the following terms:

1. A total of Kshs. 225,000/- is taxed off item 1
2. A total sum of Kshs. 4,000/- is taxed of item 28
3. A total sum of Kshs. 4,000/- is taxed of item 35
4. Costs shall be in the cause

DATED AT MERU THIS 11<sup>TH</sup> DAY OF MARCH, 2021

T. W. CHERERE

**JUDGE**

Court Assistant - Morris Kinoti

For Applicant - Mr. Gitonga for Haron Gitonga & Co. Advocates

For Respondent - Mr. Chesoro for Millimo Muthomi & Co, Advocates