



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO. 1 OF 2017

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.....1ST DEFENDANT

KTDA MANAGEMENT SERVICES LIMITED.....2ND DEFENDANT/1ST APPLICANT

KENYA TEA DEVELOPMENT AGENCY LIMITED.....3RD DEFENDANT/2ND APPLICANT

ALOISE MUGENDI MBIJIWE.....4TH DEFENDANT/APPLICANT

RULING

Background

- 1) By a ruling dated, the Respondent's applications dated 9th January 2017 and 12th 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 28th August, 2017. The bills of costs were argued by way of written submissions.
- 3) By a ruling dated 31st October, 2018, the Taxing Master ruled that the 2nd to 4th Applicants' bills of costs were unnecessary and struck them out, the taxing Master proceeded to tax the 1st Defendant'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 21st November, 2019 and filed on 22nd November, 2019, the Applicants seek orders

THAT:

- 1) That Taxing Master's decision dated 31st August, 2018 striking out the 2nd to 4th Applicant's bills of costs dated 28th August, 2017 be set aside
- 2) The Applicant's bills of costs dated 28th August, 2017 be remitted for fresh taxation

3) **In the alternative, instructions fees of each bill of costs be allowed**

4) **Costs be borne by the Plaintiff/Respondent**

5) The summons is premised mainly on the ground that the Applicants gave separate instructions to the advocate and filed separate pleadings and each is therefore entitled to costs.

6) The summons is supported by an affidavit sworn by the Dr. John Kennedy Omanga on 21st November, 2019. He describes himself as the Group Company Secretary of the 3rd Applicant and all its subsidiaries that include the 2nd Applicant and avers that he had authority of the 3rd Respondent to file the supporting affidavit. He reiterates the grounds on the face of the application and in addition deposes that the Taxing Master's decision denying costs to the Applicant's amounts to varying the High Court order awarding costs to each of the Applicants.

7) The application is opposed on the basis of a replying affidavit sworn by the Respondent on 28th February, 2020 and filed on same date. He argues that the pleadings by the Applicants are so similar that there was no need to file separate defences.

8) I have carefully considered the reference in the light of the affidavits and written submissions filed on behalf of both parties.

Analysis and Determination

9) The principles upon which this Court may interfere with the Taxing Master's decision are settled. That 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.**)

10) The issues and the parties in this application are similar to the ones in **John Gitonga Arithi v Kinoro Tea Factory Company Limited & 2 others [2021] eKLR** whose ruling was delivered on 28th day of January 2021.

11) I wholly associate and adopt the holding in that ruling where Ongijo J cited the decision in **Nguruman Limited vs Kenya Civil Aviation Authority and 3 Others [2014] eKLR** with approval and held as follows:

It is the Applicant who identified the Respondents in the plaint as separate and this would serve them with summons to enter appearance as such. He cannot turn and say that they should share instructions fees as one party. Assuming the Respondents had sued the Applicant as different entities would he have sought instructions for defending the suit against each and every Respondent and the same should apply to him.

12) Whereas the provisions of **Rule 62(2)** of the **Advocates Remuneration Rules** requires the taxing officer to disallow costs unnecessarily or improperly incurred when the same advocate is employed for two or more defendants and separate pleadings are delivered, I am persuaded that **receipt of instructions from a client is a separate exercise from drawing of pleadings and preparation of documentation for filing.**

13) Having said that, I find that the Taxing Master erred in denying the Applicants their costs and particularly instructions fees, drawings and filing fees and this court is therefore entitled to interfere with the decision on taxation.

14) In the end, I find that 21st November, 2019 and filed on 22nd November, 2019, has merit and it is allowed in the following terms:

1) **That Taxing Master's decision dated 31st August, 2018 striking out the 2nd to 4th Applicants' bills of costs dated 28th August, 2017 is hereby set aside**

2) **The Applicants' bills of costs dated 28th August, 2017 are allowed only in respect of instructions fees, drawings and filing fees for the same amount awarded to the 1st Defendant with variations to instructions fees at Kshs. 75,000/- as ordered in Misc. Reference No. 51 Of 2019**

3) **Each party shall bear its own costs**

Dated at Meru this 11th 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