



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISC. APPLICATION NO.E022 OF 2021

RODGERS JOAB WAFULA.....1ST APPLICANT

DRYWOOD JOINERY WORKS LIMITED2ND APPLICANT

VERSUS

KENYA INDUSTRIAL ESTATES LIMITED1ST RESPONDENT

LAY CANON SAMUEL NAMENGE.....2ND RESPONDENT

RULING

[1] The application dated 5th March 2021, is made under Rule II of the Advocates (**REMUNERATION**) Order and **S.3** and **4** of the **Civil Procedure Act**.

The applicants seeks an Order that the Ruling of the taxing officer delivered on 24th February 2021 be stayed pending hearing and determination of the application and an Order that the decision of the taxing officer delivered on 24th February 2021 to the extent that it relates to quantum awarded be set aside together with the reasoning and determination pertaining to item one (1) of the first respondent's Bill of costs dated 17th March 2020. The grounds in support of the application are set out within the appropriate chamber summons and are enhanced by the first applicant's supporting affidavit deponed on 5th March 2021. The respondents opposed the application on the basis of the grounds of opposition dated 1st April 2021 and filed herein on 9th April 2021.

At the hearing of the application, learned Counsel **Mr Luchivya** appeared for the applicants on behalf of **Mr. Osundwa Advocate**.

Learned Counsel, **Mr. Shihemi**, appeared for the first respondent on behalf of **Milimo, Muthomi & Co. Advocate**.

[2] Having considered the application on the basis of the supporting grounds, and those in opposition thereto, it is notable that prayer (1) and (2) of the chamber summons are spent.

Prayers (3) and (4) are more or less related such that a determination on prayer (3) would invariably determine prayer (4). Prayers (5) and (6) are dependant on the outcome in prayer (3) while prayer (7) is on costs which normally follow the events.

[3] Basically, the applicant's complaint is grounded on the facts that they are opposed to the decision of the taxing officer relating to the respondent's Bill of costs dated 17th March 2020, which was presented for taxation on 24th February 2021 and accordingly taxed on the same day at ksh.210,900/=. The taxed amount related to costs. The applicants contested that the taxing officer erred in principle by awarding that sum of money as costs as it was outside reasonable limit as to be manifestly excessive.

The applicants further contended "*inter-alia*" that the taxing master awarded ksh.100,000/= as instruction fees after concluding that in the main suit there was no claim for a specific sum for which the instruction fees could be pegged.

[4] The respondent's objection is grounded on the fact that the applicants have not provided adequate basis and plausible grounds for this court to interfere with the impugned decision of the taxing officer dated 24th February 2021.

It is clear to this court that the applicants are aggrieved mostly by the award of ksh.100,000/= as the instruction fees but in that regard, the taxing officer in her ruling of the 24th February 2021 properly and expressly directed herself by stating that:-

"Instruction fees is taxed at kshs.75,000/= a provided under schedule 6 paragraph 1 at pg 292 titled "other matters" for contested claims. This is so because a look at the plaint shows that the same did not have a claim for a specific sum on which

the instruction fees could be pegged. It therefore follows that getting up fees would be ksh.25,000/= being a third of the instruction fees VAT is also taxed off owing to the fact that there is no provision for the same in the ARO (sic).Item “1 is therefore taxed at ksh.100,000/=”.

[5] The schedule referred to by the taxing officer was the **Advocates Remuneration Order 2014 OR ARO**.

Otherwise, the awards made by the taxing officer on the rest of the items were not at all or substantially disputed by the applicants.

This court is therefore not convinced that the entire award of ksh.210,900/= was manifestly excessive and/or that it was made without adherence to the principles set and applicable in the taxation of costs.

The respondent’s objection to the present application is therefore sustained to the extent that the application be and is hereby dismissed with costs.

Ordered accordingly.

J.R. KARANJAH

J U D G E

[Read and signed this 10TH day of JUNE 2021]

[In the presence of **Mr. Shihemi** for Applicant and also for respondent. Holding brief for **Mr. Bett** and **Mr. Osundwa**]