

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISCELLANEOUS CIVIL CASE NO. E001 OF 2021

SALLY MWEMBU MANYARA.....APPLICANT

VERSUS

S. NYAKUNDI & CO. ADVOCATES.....RESPONDENT

RULING

The Applicant Sally Mwambu Manyora (client) was dissatisfied with the taxing master's ruling delivered in respect of an Advocate-client bill of costs. The bill of cost was taxed at Kshs 200,375/=. The Applicant is of the view that the taxed amount is exaggerated and does not take into account the actual work done. She further faulted the taxing master for failing to scrutinize each item in the bill of cost with a view to appropriately taxing off the exaggerated amount. On his part, it was the Respondent's (Advocates) case that bill of costs was taxed in accordance with the law. He was of the view that the Application did not have merit and should be dismissed. He accused the Applicant of using the court process to frustrate the realization of the fruits of the taxation.

During the hearing of the application, both the Applicant and the Respondent essentially reiterated the contents of the reference and replying affidavit. In addition to the submissions made, the Applicant proposed that she was willing to pay the Respondent the sum of Kshs 100,000/= in full and final settlement of the claim. On his part the advocate, narrated why he was entitled to the amount that was taxed in his favour. He admitted that he had already received the sum of Kshs 50,000/= in part payment of the amount owed. He was not willing to concede to any reduction of the amount that was taxed in his favour by the taxing master.

From the annexures to the affidavit sworn by the Respondent in opposition to the application, it was evident that the Respondent had been given instructions by the Applicant to act on her behalf in various matters, including court cases. On perusal of the said documents, and the decision of the taxing master, this court cannot discern any error in principle. Indeed, the taxation adhered to the principle of fairness and properly accounted for the work done by the Advocate.

In Nyangito & Co. Advocates Vs. Donyo Lessos Cremaries Ltd [2014] eKLR the court held thus:

“The circumstances under which a judge of the High Court interferes with the taxing officer’s exercise of discretion are now well known. These Principles are, (1) that the court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on error of Principle or the fee awarded was manifestly excessive as to justify on interference that it was based on an error in Principle (2) It would be an error of Principle to take into account irrelevant factors or to omit to consider relevant factors and according to the Advocates Remuneration Order itself, some of the relevant factors to be taken into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of Proceedings and any other direction by the trial Judge”

The above cited quote are two of the seven principles mentioned in the ruling. This court agrees entirely with the reasoning of the above holding.

In the premises therefore, the Applicant in the reference herein has not established any error of Principle on the part of the taxing master and therefore the reference must fail. It is hereby dismissed with costs to the Respondent.

DATED AT KITALE THIS 8TH DAY OF JUNE 2021.

L. KIMARU

JUDGE