



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL, COMMERCIAL & ADMIRALTY DIVISION

MISCELLANEOUS APPLICATION NO. 154 OF 2021

IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 OF THE LAWS OF KENYA

AND

IN THE MATTER OF TAXATION OF ADVOCATE/CLIENT'S BILL OF COSTS

BETWEEN

LUMATE TE MUCHAI & COMPANY ADVOCATES.....APPLICANT

-VERSUS-

EDEN TRANSPORT AND LOGISTICS LIMITED.....RESPONDENT

RULING

[1] Before the Court for determination is the Chamber Summons application dated **19 July 2021**. It was filed herein by the law firm of **Lumatete Muchai and Company Advocates** for orders that:

[a] The decision of the taxing master delivered on **14 July 2021** in so far as the same relates to the reasoning and determination pertaining to the Taxation of the Bill of Costs dated **15 October 2020** be set aside;

[b] The Court be pleased to refer the matter back for re-taxation of the Bill of Costs dated **15 October 2020** with proper directions thereon;

[c] In the alternative, the Court be pleased to exercise its inherent jurisdiction and re-tax the Bill of Costs dated **15 October 2020** or make directions for a fresh taxation.

[d] The costs of the reference be provided for.

[2] The application was filed pursuant to **Rules 2, 11(1)** of the **Advocates (Remuneration) Order** and **Section 3A** of the **Civil Procedure Act, Chapter 21** of the **Laws of Kenya**, on the following grounds:

[a] That the learned taxing master erred in principle and made serious errors in failing to appreciate that the value of the subject matter in dispute in **USD 312,285/=** (equivalent to **Kshs. 32,789,925/=**) owed to the applicant by the respondent;

[b] That the assessment of Bill of Costs dated **15 October 2020** at **Kshs. 395,527.66** is erroneous, manifestly inadequate and inordinately low amounting to an injustice to the applicant and not commensurate with the case at hand;

[c] That the learned taxing master erred in principle in failing to issue justifiable reasons in taxing off the amount of **Kshs. 222,185/=** which amount was to be included in the award.

[d] That the learned taxing master made serious errors in principle in failing to consider items 7 to 30 and 34 and 35 in its determination, which items the taxing master indicated in the ruling that they are drawn to scale and shall not be interfered with; and as a result thereby arrived at an award that is manifestly inadequate.

[e] That the learned taxing master made serious errors in principle in failing to issue justifiable reasons in arriving at the award of **Kshs. 395,527.66** in its decision delivered on **14 July 2021**.

[f] That the learned taxing master erred in principle in failing to consider the applicant's pleadings on record in regard to the said Bill of Costs dated **15 October 2020**;

[g] That it is in the interest of justice that the decision of the learned taxing master dated **14 July 2021** be set aside and the said Bill of Costs be taxed before another Deputy Registrar or by the Court.

[3] The aforesaid grounds were expounded on in the Supporting Affidavit sworn by **Mr. Muchai Lumatete Walubengo** on **19 July 2021**, to which **Mr. Walubengo** annexed not only copies of the documents pertinent to the impugned ruling, but also the ruling of the taxing officer dated **14 July 2021**.

[4] Although the application is unopposed, I note that the procedure set out in **Paragraph 11** of the **Advocates (Remuneration) Order**, was not complied with. That provision states thus in part:

(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

[5] The rationale for the provision is not difficult to discern. It is not always the case that an objection would be raised on all the items allowed by the taxing officer; and while it is appreciated that where a Deputy Registrar has delivered a Ruling, it would be superfluous to ask for reasons, it is always helpful for the Judge on reference to understand and appreciate the reasons for the taxing officer's decision on the specific items challenged on a reference. This is especially so in this case where one of the complaints is that the taxing officer failed to consider items 7 to 30 as well as 34 and 35 in his determination.

[6] In the premises, it is hereby directed that the strictures of **Paragraph 11(1) and (2)** of the **Advocates (Remuneration) Order** be complied with forthwith to enable the Court make a decision on the reference.

Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 13TH DAY OF OCTOBER 2021

OLGA SEWE

JUDGE