



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 61 OF 2019

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES.....APPLICANT/ADVOCATE

AND

SANLAM GENERAL INSURANCE LIMITED.....RESPONDENT/CLIENT

RULING

1) This is a reference from a decision made by the Taxing Master delivered on 18.09.2019 on the Applicant's Advocate/Client Bill of Costs dated 20.06.2019.

2) By a Chamber Summons dated 02nd December, 2019, brought under the provisions of Rule 11 (1) and (2) of the Advocates (Remuneration) Order, the Applicant seeks orders THAT:

1) The Honourable Court be pleased to set aside the ruling of the Taxing Master made on 18.09.2019 in respect of several items as shown on the face of the application.

2) The Honourable Court be pleased to tax the Bill of Costs afresh or remit the Bill of Costs for taxation by another Taxing Master

3) Costs be awarded to the Applicant

3) The motion is premised on the grounds on the body of the application and the supporting affidavit sworn by Martin G. Mwaniki Advocate sworn on 02.12.2019. Annexed to the affidavit is the Applicant's Advocate/Client Bill of Costs dated 20.06.2019 and a notice of election to tax the bill under Schedule V Part II of the Order.

4) A perusal of the file shows that the Respondent did not file any response to the Applicant's summons.

5) I have carefully considered the reference in the light of the supporting affidavit, written submissions filed on behalf of the Applicant and the Taxing Master's ruling dated 18.09.2019.

6) Paragraph 22(1) of the Advocates Remuneration Order provides as follows: -

“In all cases in which any other Schedule applies an advocate may, before or contemporaneously with rendering a bill of costs drawn as between advocate and client, signify to the client his election that, instead of charging under the Schedule, his remuneration shall be according to the scale applicable under the other Schedule.”

7) The Bill of Costs speaks for itself clearly concerning the Applicant's election to apply Schedule V. The Bill of Costs was received in court on 28.06.2019 and served on the Respondent on 15.08.2019 as the receiving stamps on it signify.

8) Indeed, the Taxing Officer was wholly aware that the Applicant had specifically put in the heading, “Advocates Bill of Costs under Schedule V. I am persuaded that the Applicant fully complied with paragraph 22 (1) aforesaid and the learned Taxing Officer correctly taxed the Bill of Costs under Schedule V.

Item 1

9) A Judge of the High Court cannot interfere with the taxing officer's exercise of discretion unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. (**See Nyangito & Co. Advocates v Doinyo Lessos Creameries Ltd [2014] eKLR.**).

10) The Bill of Costs arises from defending a claim for damages arising from a road accident. On that basis, the Taxing Master ruled that the matter was not complex and taxed item 1 on instructions fees at Kshs. 25,200/-. The said sum ought to have been increased by half bringing the total to Kshs. 37,800/- and item 1 is therefore enhanced to Kshs. 37,800/-.

Items 2, 16 and 20: Receiving and perusing

11) Item 2 has 5 folios and at Kshs. 50/- is 250/-

12) item 16 has 2 and at Kshs. 50/- is 100/-

13) Item 20 has 1 folio and at Kshs. 70/- is 70/-

Items 3, 21 and 23: Drawing

14) . Item 3 has 4 folios and at Kshs. 168/- is 672/-

15) Item 21 has 4 folios and at Kshs. 250/- is 1,000/-

16) Item 23 has 2folios and at 250/- is 500/-

Items 4, 22 and 24: Copies

17) Items 4, 22 and 24 were taxed to scale

18) The order taxing off items that were not supported by supporting documents was well founded

19) Attendances at Items 12 Item 33 for attendance when case did not proceed and on the day of taxation could not have taken 2 and 4 hours respectively. I find they were taxed to scale.

20) The upshot of this is that Chamber Summons dated 02.12. 2019 succeeds as stated at paragraphs 10 to 17 of this ruling.

21) Costs of the reference shall be borne by the Respondent.

DATED AT MERU THIS 2ND DAY OF DECEMBER 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicant - N/A for Muri, Mwaniki, Thige & Kageni LLP

For Respondent - N/A