



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM; CHERERE-J)

MISC. CIVIL CAUSE NO. 02 OF 2018

BETWEEN

KHUSHBIR HARJEET SINGH CHADHA.....APPLICANT

AND

WESLEY MARANGA ROBINSON GICHABA.....ADVOCATE/RESPONDENT

RULING

Background

1. By a ruling dated 10th August, 2018, the Taxing Master taxed the Respondent's Advocate-Client Bill of Costs dated 15th January, 2018 at Kshs. 3,889,249.50.

Chamber Summons

2. Aggrieved by the decision of the Taxing Master, the Applicant filed chamber summons dated 02nd October, 2019 filed on 03rd October 2019 brought under the provisions of Rule 11(2) of the Advocates (Remuneration) seeking orders **THAT: -**

1. That this Honourable Court be pleased to set aside, reverse, review and or otherwise vary the decision of the Taxing Master delivered on 10th August, 2018 wherein the Advocate/Client bill of costs dated 15th January, 2018 was taxed at Kshs. 3,889,249.50.

2. That the Honourable Court be pleased to re-tax the said advocate/client bills or order for fresh taxation

3. The chambers summons is premised on the grounds among others that:

i. The Taxing Master did not tax the bill in terms of the Advocates Remuneration Order and further that the bill of costs is grossly excessive given that Party and Party costs were taxed at Kshs. 489,699.20.

ii. The Taxing Master failed to take into account the provisions of Section 46 of the Advocates Act which limits the Advocate-Client costs to less than 25% of the general damages recovered

less the Party and Party costs as taxed

iii. The expenditure on disbursements were not supported by receipts

iv. The Advocate-Client costs is more than half the decretal sum of Kshs. 6,805,000/- in KISUMU HCCC NO. 61 OF 2001

v. The Advocate-Client costs is more than half the Party and Party costs taxed at Kshs. 489,699.20.

4. The chamber summons is supported by an affidavit sworn by the Applicant on 02nd October, 2019 in which he reiterates the grounds on the face of the application. Annexed to the affidavit are grounds of opposition to the bill, dated 02nd February, 2018, the Taxing Master's ruling dated 10th August, 2018 and notice of objection to the taxed bill of costs marked KHSC 1, 3 and 4 respectively.

5. The Respondent, though served neither filed a response nor attended the hearing.

Analysis and Determination

6. I have carefully considered the chamber summons in the light of the supporting affidavit and the written submissions filed by counsel for the Applicant and I have identified the only issue for determination is whether the Taxing Master's ruling 10th August, 2018 taxing the advocate/client bills of costs dated the Advocate/Client bill of costs dated 15th January, 2018 at Kshs. 3,889,249.50 ought to be set aside, reversed, reviewed and or otherwise varied.

7. Under section 3 of the Administrative Action Act No. 4 of 2015, any person performing a judicial function under the constitution or written law pursuant to section 4 (2) of that Act is under a legal duty to give written reasons for any decision reached in the course of a judicial process.

8. The rationale for giving reasons in a judgement or ruling or decision was espoused in the persuasive authority in the case of **Soulemzis Versus Dudley (Holdings) PTY Limited, 1987 10 NS WLR 247, 279 where MC Hugh JA held as follows:**

“The giving of reasons for a judicial decision serves three purposes:

First, it enables the parties to see the extent to which their arguments have been understood and accepted as well as the basis of the Judge's decision. As Lord Macmillan has pointed, the main purpose of a reasoned judgement is not only to do but seem to do justice. Secondly, the giving of reasons furthers judicial accountability. A requirement that Judges give reasons for the decisions, grounds of decision that can be debated, attacked and defended – serves a vital function in construing the Judiciary's exercise of power. Thirdly, under the common law system of adjudication, courts not only resolve disputes, they formulate rules for application in future cases.”

9. Further in deciding a similar question, the Learned Judges stated in the case of **Commonwealth Versus Versus Pharmacy guild of Australia 1989 91 ALR 65; 68:**

“The provision of reasons is an important aspect of the tribunal's overall task. Reasons are required to inform the public and parties with an immediate interest in the outcome of the proceedings of the manner in which the tribunal's conclusions were arrived at. A purpose of requiring reasons is to enable the question whether legal error has been made by the tribunal to be more readily perceived than otherwise might be the case. But that is not the only important purpose which the furnishing of reasons has. A prime purpose is the disclosure of

the tribunal’s reasoning process to the public and the parties. The provision of reasons engenders confidence in the community that the tribunal has gone about its task appropriately and fairly. The statement of bare conclusions without the statement of reasons will always expose the tribunal to the suggestion that it has not given the matter close enough attention or that it has allowed extraneous matters to cloud its consideration. There is yet a further purpose to be served in the giving of reasons. An obligation to give reasons imposes upon the decision-maker an intellectual discipline. The tribunal is required to state publicly what its reasoning process is. This is a sound administrative safeguard tending to ensure that a tribunal such as this properly discharges the important statutory function which it has.”

10. The provisions of paragraph 11(1) (2) of the Advocates Remuneration Order imposes a duty to give reasons on the Taxing Master taxing a bill of costs.

11. The Taxing Master’s ruling dated 10th August, 2018 19 merely stated that the bill was drawn to scale, was not opposed and was therefore allowed as drawn. With due respect, that ruling did not give any reasons for taxation of the bill of costs at taxed at an aggregate sum of at Kshs. 3,889,249.50. The casual manner in which the bill of costs was taxed is in my considered view a breach of the legal duty to give written reasons for any decision reached in the course of a judicial process imposed by Article 10 and Article 47 (1) section 4 (2), paragraph 11(1) (2) of the Advocates Remuneration Order and the Taxation herein is for that reason fit for setting aside.

12. From the foregoing analysis, I find merit in the chamber summons dated 02nd October, 2019 filed on 03rd October 2019 and it is hereby ordered:

1. The decision and award of the Taxing Master given and made vide a ruling delivered on ruling dated 10th August, 2018 is set aside and remitted to the Taxing Master for re-taxation

2. The costs of this application will abide the outcome of the taxations.

DELIVERED AND SIGNED IN KISUMU ON THIS 30th DAY OF January 2020

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi & Okodoi

For the Applicant/Client -Ms Auma hb for Eboso

For the Advocate/Respondent - N/A