



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS APPL. NO. 30 OF 2017

IN THE MATTER OF THE ADVOCATES ACT CAP 16 AND

THE ADVOCATES (REMUNERATION) ORDER, 2009

AND

IN THE MATTER OF THE ADVOCATES (REMUNERATION) (AMENDMENT) ORDER, 2014

AND

IN THE MATTER OF THE ADVOCATE-CLIENT BILL OF COSTS

BETWEEN

MUMIAS SUGAR COMPANY LIMITED.....APPLICANT

AND

PROFESSOR TOM OJIENDA & ASSOCIATESRESPONDENT

[Being a Reference filed pursuant to the leave of court granted on 20th March, 2018 against Hon. P.W. Mbulikah's (the taxing officer's) Ruling in Misc Application No. 30 of 2017]

RULING

In a Ruling delivered on 11th October 2017 the taxing officer awarded to the advocate costs in the sum of Kshs 1,603,555/=.

1. In arriving at that sum the learned taxing officer noted that pursuant to the Advocates Remuneration Order, the minimum prescribed Instruction Fee applicable to the case was Kshs.100,000/=.
2. She then proceeded to award an Instruction Fee in the sum of
Kshs 800,000/=.
3. Having determined the Instruction Fee, the taxing officer ruled that the same ought to be increased by 50%.
4. The Bill of Costs which was being taxed is an Advocate/Client Bill. It was not a Party & Party Bill.
5. When a Party & Party Bill of Costs has been taxed, it is in order for the taxing officer to determine the Advocate/Client costs in that case, by simply increasing the Party costs by 50%.
6. However, when an Advocate/Client Bill of Costs has been taxed, there is no legal basis for increasing it by 50%.
7. In this case I find that the learned taxing officer did not provide any justification to warrant an increase of the minimum prescribed Instruction Fee from Kshs 100,000/= to Kshs 800,000/=.
8. I find that the decision to multiply the minimum prescribed fee by a factor of 8 was unjustified. It resulted in a very high un-explained amount, which I can only attribute to either the application of irrelevant factors or the failure to give consideration to the relevant factors.

9. In the event, I do set aside the findings of the learned taxing officer, and direct that a taxing officer other than Hon. P.W. Mbulikah will handle the Bill of Costs.

10. The costs of the reference are awarded to the client.

DATED, SIGNED and DELIVERED at KISUMU

This **6th** day of **February** 2019

FRED A. OCHIENG

JUDGE