



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISCELLANEOUS APPLICATION NO. 222 OF 2017**

**IN THE MATTER OF THE ADVOCATES ACT**

**(CHAPTER 16 OF THE LAWS OF KENYA)**

**AND**

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

**NYAMWATA & ASSOCIATES ADVOCATES.....APPLICANTS**

**-VERSUS-**

**CHUNA CO-OPERATIVE SAVINGS & CREDIT...RESPONDENTS**

(Being a Reference from the decision of Taxing Officer Elizabeth Tanui Deputy - Registrar on 21<sup>st</sup> September 2017)

**RULING**

1. The Taxing Master, on 21<sup>st</sup> September 2017 taxed the Advocate/Client Bill of Costs presented by Nyamwata & Associates, Advocates (the Applicants). The Client in that respect was Chuna Co-operative Savings & Credit Society Limited (the Respondent).

**BACK GROUND**

2. It is not disputed that the Applicant was instructed to institute a suit, at the Co-operative Societies Tribunal of Kenya against SACCO SOCIETIES REGULATORY AUTHORITY (SASRA). It in relation to that suit that the costs were taxed. The Taxing Master found that the prayers, in the claim before the Co-operative Societies Tribunal, did not specify liquidated amount owed by the Respondent, but rather the claim challenged the administrative directive of SASRA. The Taxing Master therefore concluded that the value of the subject matter, in that claim, could not be ascertained. The Taxing Master, therefore, found that the applicable schedule of the Remuneration Order was Schedule 11 paragraph 9 of 2014 Remuneration Order. The Taxing Master proceeded to consider the basic instruction fee of Kshs. 35,280 which she proceeded to enhance, while considering the nature and importance of the proceedings, the documents prepared and perused, and increase instruction fee to Kshs. 300,000.

3. The Applicant was aggrieved by that decision and hence has filed this reference.

**CHAMBER SUMMONS DATED 3<sup>RD</sup> JANUARY 2018**

4. By that Chamber Summons the Applicant seeks the following orders:

- a. That the decision of the Honourable Taxing Officer made on 21<sup>st</sup> November 2017 in respect of the Advocate/Client Bill of Costs be reviewed, varied and/or set aside.
- b. That the Honourable Judge do tax a fresh the instructions fees in the Advocate/Client Bill of Costs.
- c. That alternatively, the Honourable judge be pleased to refer with specific directions the said Advocate/Client Bill of Costs to the same or another Taxing Officer to tax the instructions fees afresh.

5. The Applicant submitted that the Taxing Officer applied wrong principles in carrying out the taxation, and by taxing the instruction fee at Kshs. 300,000. That the Taxing Master failed to appreciate there was value of the subject matter which was discernable from the pleadings before the Co-operative Societies Tribunal. That the Taxing Master misdirected herself in arriving at the instruction fee which was manifestly too low.

6. The Respondent opposed the reference through a Replying Affidavit of Martin Ogola, the Respondent's Chief Executive Officer. By that affidavit the Respondent confirmed having instructed the Applicant to file a suit together with an application of injunction. That the suit was provoked by the SASRA's allegation that the Respondent's books had not balanced and that there was Kshs. 661,012,513 which was not properly accounted for in the books. The Respondent further stated the claim was aimed at restraining SASRA from taking adverse action against the Respondent. Respondent emphasized that the Respondent did not owe SASRA that amount, or any other amount. That SASRA was exercising its mandate, that is to safeguard the depositors and shareholders' funds and punish the Respondent's officials for the alleged failure to balance the books. That the suit filed by the Applicant was to avert adverse administrative action against the Respondent's Officials, because SASRA's action could have left Respondent without official.

7. I have considered the parties submissions and affidavit.

8. The suit filed before the Co-operative Societies Tribunal, as correctly stated by the Respondent has its central theme of the Respondent seeking to restrain SASRA from taking administrative action. The word claim is defined in **BLACK'S LAW** Dictionary 10<sup>th</sup> edition as:

**“A demand for money, property, or a legal remedy to which one asserts a right; especially, the part of a complaint in a civil action specifying what relief, the Plaintiff asks for.”**

9. The Respondent, through its action before the Co-operative Societies Tribunal sought the remedy to stop administrative action. That is clear from the statement of claim filed before that Tribunal.

10. That being my finding I am of the view the Taxing Master cannot be faulted for arriving at the decision, that the subject matter could not be ascertained because the Respondent did not owe SASRA Kshs. 661,012,513. I wholly concur with the Taxing Master's reliance of two cases in her Ruling namely **MURGOR AND MURGOR ADVOCATES –VS- THE CENTRAL BANK OF KENYA & ANOTHER HCCC NO. 696 OF 1998** where it was held:

**“Value of the subject matter” directly refers to “claim” in prayers against litigants.”**

11. In view of the above finding, **the Chamber Summons dated 3<sup>rd</sup> January 2018 is dismissed. The Respondent, having succeeded, is awarded costs of that Chamber Summons.**

**DATED SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> day of MARCH, 2019.**

**MARY KASANGO**

**JUDGE**

**Ruling Read and Delivered in Open Court in the Presence of:**

Sophie.....**COURT ASSISTANT**

.....**COUNSEL FOR THE APPLICANTS**

.....**COUNSEL FOR THE RESPONDENTS**