



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISCELLANEOUS CAUSE NO. 167 OF 2015

MWANGI KENG'ARA & CO. ADVOCATES.....ADVOCATES

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....CLIENT

(Being a Reference from the taxation by Hon. C. M. Wattinah D.R. dated 7th March 2017 and delivered on 6th April 2017)

RULING

1. Before me is the Chamber Summons dated 6th February 2018. It is filed by Mwangi Keng'ara & Company Advocates, (the Advocates). It is in respect to the taxation of Advocates/Client Bill of Costs. The Bill of Costs was filed by the Advocate against the Client Invesco Assurance Company Limited.
2. By the application, before me, the Advocate sought the prayer that the taxation delivered on 6th April 2017 (but wrongly indicated by the Advocate as of 16th August 2016) be set aside and the Bill of Costs be remitted back for taxation before any other Taxing Master.
3. The application is based on the grounds that the Taxing Master erred in taxing the Bill of Costs under Schedule VII of the Advocates (Remuneration) Order, hereinafter referred to as the Order, that the Taxing Master erred in failing to find the Advocate made an election under Paragraph 22(1) to proceed with taxation under Schedule V Part II of the Order, that the Taxing Master erred in failing to apply Legal Notice No. 159 of 11/11/2006 and Legal Notice No. 35 of 1/3/11 to work done after 17th November 2006; that the Taxing Master erred to tax off, the amount taxed off, without giving reasons; and that the Taxing Master erred in taxing off disbursements without complying with Paragraph 75(1) of the Order.
4. The Client submitted in opposition to the said application. The Client began by setting out the principles under which a Judge can interfere with a Taxing Master's decision on taxation. The Client referred to various authorities, on this point, one of them being the often quoted case of **JORETH V KIGANO & ASSOCIATES EALR [2002] IEA 92** where the Court of Appeal had this to say:

“What the Learned Judge did not appreciate, was that sitting on a reference against the assessment of instruction fee by the Taxing Officer he ought not to have interfered with the assessment of costs unless the Taxing Officer had misdirected himself on a matter of principle.”

5. On the election made by the Advocate to tax the Bill of Costs on Schedule V, the Client submitted that the Advocate was instructed, by the Client, on the understanding she would charge her fees on Schedule VII.
6. On the amount taxed off the Client submitted that the Advocate had a responsibility to support the Bill of Costs with the supporting documents.
7. In respect to the provision of Paragraph 75 of the Order the Client maintained that the Advocate had an obligation to support, with documents, her disbursements claim.

DISCUSSION AND DETERMINATION

8. The Advocate submitted that the Court can interfere with Taxing Master's decision and to support that submission the Advocate referred to the case **THOMAS JAMES ARTHUR VS NYERI ELECTRICITY UNDERTAKING (1961) EA 492** where the Court of Appeal stated, on the Court's interference of the Taxing Master's decision:

“Where there has been an error in principle the Court will interfere but questions solely of quantum are regarded as matters with which the Taxing Officers are particularly fitted to deal and the Court will only intervene in exceptional cases.”

9. Paragraph 22(1) of the Order Provides:

“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 such Schedule, his remuneration shall be according to Schedule 5, but if no election is made his remuneration shall be according to the scale applicable under the other Schedule.”

10. On my perusal of the documents in this file, I have indeed found that the Advocate gave a written notice to the Client dated 9th April 2015, to tax the Bill of Costs under Schedule V Part II, which was received by the Client. The same notice was also incorporated into the title of the Bill of Costs filed herein.

11. It follows that the Advocate did indeed take up the option under Paragraph 22 of the Order and the Taxing Master should have accordingly taxed the bill as per that option.

12. On my perusal of the Bill of Costs and the learned Taxing Master’s taxation, I do indeed find the Taxing Master erred in failing to apply Legal Notice No. 159 of 11/11/2006 and Legal Notice No. 35 of 1/4/2011 appropriately.

13. The Taxing Master also ought to have demonstrated how he exercised his discretion in taxing off the various items and having failed to give reasons that is an error in principle, in the taxation of those items.

14. The Taxing Master should have requested the Advocate to provide documents to support disbursements as set out in Paragraph 75 (1) of the Order. That Paragraph provides:

Paragraph 75(1)

“All drafts and other documents or copies thereof, the preparation of which is charged for, shall be produced at taxation if required by the Taxing Officer.”

15. On the whole, I find there is merit in the Advocates reference and accordingly I make the following Orders:

- a) **The taxation of Hon. G. M. Wattimah D.R. dated 7th March 2017 and delivered 6th April 2017 is hereby set aside.**
- b) **The Advocate’s Bill of Costs dated 9th April 2015 shall be re-taxed by any other Taxing Master other than Hon. G. M. Wattimah D.R.**
- c) **The costs of Chamber Summons dated 6th February 2018 are awarded to the Advocate with the bill.**

DATED, SIGNED and DELIVERED at NAIROBI this 15TH day of MAY, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

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

..... **FOR THE ADVOCATE**

..... **FOR THE CLIENT**