

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. APPLICATION NO 48 OF 2015

**MURI MWANIKI & WAMITI
ADVOCATES.....ADVOCATE/RESPONDENT**

VERSUS

**KENYA ORIENT INSURANCE LTD.....CLIENT/
APPLICANT**

RULING

1. This is a reference to this Court from a decision of the Taxing Officer on the Respondent's bill of costs dated 22nd April, 2015. The Applicant's Chamber Summons application dated 16th November, 2017 is brought under the provisions of Rule 11(2) of the Advocates (Remuneration) order. It seeks the following orders:-

1. That the Honourable Court be pleased to review, set aside and/or vary the decision of the Taxing Master made on 20th February, 2017 in respect of items 57, 62, 65, 67, 68, 69, 70, 71, 72, 73, 75, 76, 78, 79, 80, 83, 85, 87, 90, 91, 93, 95, 96, 97, 99, 102 and 103.

2. The costs of this application be in the cause

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn by Peter M. Karanja on 16th November, 2017. Attached to the affidavit the Respondent's bill of costs dated 22nd April, 2015; the applicant's submission filed before the Taxing Master, the Taxing Master's decision on Taxation, notice of objection on Taxation, letter requesting for reasons from the taxing master and the response thereof marked **PK 1 to 6** respectively.

3. The application is opposed on the basis of grounds of a replying affidavit sworn by Martin G. Mwaniki on 5th December, 2017 in which it is stated that the Taxing Master's discretion was exercised properly and that the reference is calculated to prejudice, embarrass and delay the advocate's fees.

SUBMISSIONS BY PARTIES

4. I have carefully considered the reference in the light of the affidavits and submissions for both parties. In determining the reference, I shall deal with each item as presented in the reference.

i. On items 59 and 69, the Taxing Master found that the advocate was in court on 28th April, 2014 and 26th May, 2014 and in her discretion taxed the items at Ksh. 15,000/-each.

ii. On items 62 and 63, the Taxing Master rightfully found that only Mr. Olel, advocate for the plaintiff attended court on 19th May, 2014 and therefore items 62 and 63 ought to have been taxed off.

iii. It was submitted that items 67, 69, 70, 71, 72, 73, 75, 76, 78, 79, 80, 83, 85, 87, 90, 91, 93, 95, 96, 97, 99, 102 and 103 should be taxed off in accordance with the provisions of Rule 77 (i) of the Advocates Remuneration Order.

8. Rule 77 (i) of the Advocates Remuneration Order (**Order**) provides as follows:

Where more than one-sixth taxed off

(1)

If more than one-sixth of the total amount of a bill of costs, exclusive of court fees, be disallowed on taxation, the party presenting the bill for taxation may, in the discretion of the taxing officer, be disallowed the costs of such taxation.

(2)

The decision of the taxing officer under this rule shall be final.

9. The operational word in rule 77 (1) of the Order is “**MAY**”. The Taxing Master in her discretion decided not to disallow the costs of the taxation and that decision is final under the provisions of rule 77 (2) of the Order.

10. I am well aware of the discretion given to the Taxing Officer in taxation matters under Section 27 of the Civil Procedure Act, 2010, and that this court should only interfere with that discretion if there is an error in principle, or if the sum arrived at was either so high or so low as to imply that the taxing officer applied the wrong principles.

11. I am satisfied that such is the case here but only in respect of items 62 and 63. The applicant has not satisfied the court that interference with the Taxation on items 59, 65, 67, 69, 70, 71, 72, 73, 75, 76, 78, 79, 80, 83, 85, 87, 90, 91, 93, 95, 96, 97, 99, 102 and 103 would be justified.

Decision

12. Accordingly, the applicant’s Chamber Summons application dated 16th November, 2017 is allowed in the following terms:

1. The sum of Kshs. 4,000/- on item 62 and Kshs. 15,000/- on items 63 are taxed off

2. Costs shall be in the cause

DATED AND DELIVERED ON THIS 8th DAY OF February 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix & Caroline

Applicant - Mr Karanja

Respondent - N/A