



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL SUIT NO. 48 OF 2012**

**MATATU WELFARE ASSOCIATION.....PLAINTIFF**

**VS.**

**INVESCO ASSURANCE CO. LTD.....DEFENDANT**

**AND**

**DIRECTLINE ASSURANCE COMPANY LTD.....1<sup>ST</sup> INTERESTED PARTY**

**AFRICA MERCHANT ASSURANCE CO. LTD (AMACO).....2<sup>ND</sup> INTERESTED PARTY**

**GATEWAY ASSURANCE CO. LTD.....3<sup>RD</sup> INTERESTED PARTY**

**ASSOCIATION OF KENYA INSURERS (AKI).....4<sup>TH</sup> INTERESTED PARTY**

**COMMISSIONER OF INSURANCE.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a Reference from the Taxation of the Bill of costs of the Association of Kenya Insurer (AKI or the 4<sup>th</sup> Interested party) made on 11<sup>th</sup> March 2016.

2. The Taxation was in answer to the Bill of Costs dated 4<sup>th</sup> July 2013. It was a Party and Party Bill. In that Bill, AKI had partly sought Instructions fees of Khs.3,000,000/= but to its dismay was only awarded Khs.20,000. That is the item that aggrieves AKI and which has triggered this reference.

3. In a Plaint filed on 31<sup>st</sup> January 2012, the Plaintiff had brought a suit against the Defendant in which it named 5 interested parties, AKI being one of them. In the Plaint, the Plaintiff described itself as a Welfare Association representing an “amalgam of several Public Service vehicle Societies and/or Saccos”. The Plaintiff complained that, without notice, the Defendant (an Insurer) had varied the rate and mode of payment of Insurance Premium for Public Service Vehicles. The prayers sought by the Plaintiff were:-

**(i) A Permanent Injunction restraining the Defendant, their Agents or servants or whoever**

**from varying the Premium payment from Ksh.7,817 per month for 14 seater Public Service Vehicle to Kshs.16,005/= and or doing anything prejudicial.**

**(ii) A declaration that doubting the Premiums is highly prejudicial to the Plaintiffs.**

**(iii) Such further or any other relief as the Court deems fit and just in the circumstances of the case.**

**(iv) Costs.**

4. From the Plaintiff it would not be apparent why AKI was enjoined to the proceedings as an Interested Party. Indeed in a Ruling of 13<sup>th</sup> June 2012, which was a fatal blow to the Plaintiff, Hon. Ogola J. observed,

***“Secondly, there is no provision in law for an interested party position. The Plaintiff in his suit has not sought any specific prayer against the 10 called interested parties. It is not clear why the Plaintiff dragged the 10 called interested parties to this Court when the Plaintiff expects no remedy from them”***

In the end the Judge struck out the entire suit with costs as being an abuse of the process of Court.

5. Fast forward to the Taxation of AKI's Bill of Costs. When AKI sought for the reasons for the Taxation, the Taxing Officer provided a certified copy of her Decision of 11<sup>th</sup> March, 2016.

6. The relevant part of her Decision is that on item No.1 of the Bill in which the Taxing Officer stated,

***“In regard to Item No.1, the prayers sought in the Plaintiff are injunctive reliefs. The value of the subject matter cannot be ascertained from the pleadings, settlement or judgement. Under Schedule 6A Paragraph 1, the applicable rate is such sums as may be reasonable but not less than Kshs.8,400/=. The Applicant/4<sup>th</sup> Interested Party in this case seeks Kshs.3,000,000. However, considering the nature and importance of the matter to the parties, and the general conduct of the proceedings and the role played by the 4<sup>th</sup> Interested Party, I find a sum of Kshs.20,000/= to be sufficient as Instruction Fee. A sum of Kshs.2,980,000/= is therefore taxed off”.***

7. The power of the High Court to interfere with the Decision of a Taxing Officer in Taxation is circumscribed. It will not interfere unless the decision is based on an error of principle or that it is manifestly low or excess as to justify an inference that it was based on an error of principle.

8. Supporting the Reference, Counsel for AKI submitted that the costs given were manifestly low given that:-

(i) The suit was in respect to a Novel point of Law which was that it sought an injunction to challenge Premium Rates of a Service provider.

(ii) The suit was on an important matter.

(iii) AKI filed a Preliminary Objection which resulted in the Dismissal and its advocate expended a lot of time and research on it.

9. The Plaintiff drew this Court to the Provisions of Articles 10,27(1), 48, 50, 159 and the preamble to The Constitution 2010 for the argument that the intent of the Drafter was to grant access to justice. Litigation must be affordable and everyone should access the Court without fear of costs, it was argued.

10. The Court was urged to consider that the matter was not heard on merit and was decided on a

technicality. In addition that the suit was a Public Interest Litigation.

11. The item on Instructions fees fell to be dealt under the provisions of Schedule VI A of the Advocates (Remuneration) Amendment Order 2006. As correctly observed by the Taxing Officer, the value of the subject matter could not be ascertained from the pleadings, judgement or settlement and so the applicable fees would be in paragraph L. Yet thereunder the fees would be such sum as may be reasonable but not less than Khs,6,350 and not 8.400 as stated by the Taxing officer. But that may not be of much significance.

12. The discretion of the Taxing Officer in reaching what is reasonable ought to be guided by proviso (i) of part 1 of Schedule VI A which reads:-

**“Provided that-**

**(i) The Taxing Officer, in the exercise of this discretion, shall take into consideration the other fees and allowances to the advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the trial Judge, and all other relevant circumstances”.**

13. The Taxing Officer thought Khs.20,000 to be sufficient as Instructions fees stating that she had considered:-

*“the nature and importance of the matter to the parties, and the general conduct of the proceedings and the role played by the 4<sup>th</sup> Interested Party”.*

14. What the Taxing Officer failed to do is to specify or clarify the nature and importance of the matter and reasons for reaching such a decision. The Taxing Officer did not state what the general conduct of the proceedings was and the nature and extent of the role played by the 4<sup>th</sup> interested party. The provisions of the Remuneration Order enjoins the Taxing Officer to consider certain factors when arriving at reasonable fees. The factors provide the framework within which the Taxing Officer can act judiciously. When asked to give reasons for a Taxation, the reasons given must enable the parties understand how the Decision was reached. While I am not prepared, and cannot prescribe the extent of detail of the reasons to be given, they must be sufficient as to reveal whether the Taxing Officer acted judiciously. To simply restate the consideration set out in the Rules without relating them to the Bill is unhelpful. There is no knowing what informed the Decision of the Taxing officer and this Court cannot say that she acted judiciously. The remedy is to set aside the Taxation.

15. As I close, I think it is necessary to weigh in on an issue raised by the Respondent. When urging the Court to find that the matter was a Public Interest Litigation (PIL), Counsel for the Respondent submitted that it is the role of the Taxing Master to make a finding whether or not a matter is a Public Interest Litigation. On my part it seems that a direction as to whether a matter is a Public Interest Litigation, just like certification for more than one Advocate or for Senior Counsel, is a call to be made by the Trial Judge. It is the Trial Judge who interacts with the issues raised and would be best placed to make such a decision. And the practice should be that where a party is of the view that the litigation is of Public Interest nature, then it should take it up before the Trial Court. There are significant cost consequences on a matter being determined to be a Public Interest Litigation because, Courts are invariably keen to limit costs in such matters, and so the parties should be given opportunity to make their views known to the Trial Court before it makes its determination.

16. Otherwise, I allow the Chamber Summons dated 5<sup>th</sup> May 2016 to the extent that I set aside the Decision of the Taxing Officer dated 11<sup>th</sup> March 2010 on item 1 and remit the same for fresh Taxation before a different Taxing Officer.

**Dated, Signed and Delivered in Court at Nairobi this 10<sup>th</sup> day of May,2018.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Mutai for Applicant

N/A for Respondent

Nixon - Court Assistant