



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISCELLANEOUS CAUSE NO. 53 OF 2017

M. KORONGO & CO. ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

KENYA SUGAR RESEARCH FOUNDATION.....CLIENT/RESPONDENT

(Being a reference of taxation on 19th July 2018 by the Deputy Registrar Elizabeth Tanui)

RULING

1. The Chamber Summons dated 28th July 2017 is a reference of taxation which is filed under the provisions of Paragraph 11(2) of the Advocates (remuneration) Order (hereinafter the Remuneration Order). The reference is made by M. Korongo & Co. Advocates (hereinafter the Advocate). It is in respect of the Advocate/Client Bill of Costs. The Client is Kenya sugar research foundation.
2. The Chamber Summons is for setting aside the taxation of the Advocate's Bill of Costs dated 7th February 2017, which was taxed on 19th July 2018. The Advocate relies on the grounds that the Taxing Master relied on the wrong principles of law and failed to consider that the bill was drawn to scale. The Advocate stated that he is dissatisfied with the entire taxation.
3. Neither the Advocate nor the Client presented submissions in respect of the reference.
4. It is pertinent to begin by considering the circumstances that would lead a judge to interfere with Taxing Master's exercise of discretion. The Court would only interfere with a Taxing Master's discretion where it shown either the decision was based on an error of principle or that the fee which was awarded was manifestly excessive to justify interference. This principle was re-stated in the case of **KIPKORIR, TITOO & KIARA ADVOCATES VS DEPOSIT PROTECTION FUND BOARD (2005) 1 KLR 528** thus:

“... on a reference to a judge from the Taxing Officer, the judge will not normally interfere with the exercise of discretion by Taxing Officer unless the Taxing Officer erred in principle in assessing the costs

...An example of an error of principle is where the costs allowed are so manifestly excessive as to justify an interference that the taxation Officer acted on erroneous principles.”
5. The Advocate, as stated before, did not support his reference with submissions. This Court therefore will decide the reference on the basis of the taxation and the submissions filed before the Taxing Master.
6. It is important to state that the Advocate's fees relate to his representation of the Client in the High Court Civil Case No. 103 of 2006. In that case the Client was the 1st Defendant. The plaintiff's claim against the Defendants was Kshs. 104,524,610. It is also on record that the 1st Defendant was represented by another Advocate, namely G. O. Mogaka Advocate until September 2008 when this Advocate took over the conduct of the 1st Defendant's case.
7. On the instruction fees, on the Bill of Costs, the Advocate sought Kshs. 2 million. This fee was based on the plaintiff's claim in HCCC 103 of 2006.
8. The Client objected to that fee on the bases that instruction fee is charged only once and that it would therefore be payable to the previous Advocate who acted for the 1st Defendant.
9. In her considered ruling the Taxing Master stated thus on this item:

“In this matter, the applicant has sought for instruction fee of Kshs. 2,000,000 to defend a claim against the 1st Defendant for permanent injunction, a claim of Kshs. 104,524,610 and costs and interest.

The date of this instruction is indicated as 26/01/2006. However, it is common ground that the applicant received instructions and filed notice of change of Advocates dated 23rd October 2008 on 24th September 2008. Those dates do not make sense but whatever the explanation, this was in the year 2008.

The applicant cannot be said to have received any instruction on 26th October 2006.

The firm that is entitled to charge for those instructions is the firm of G.O. Mogaka and Co. Advocates.

I therefore tax off item No. 1 in its entirety.”

10. The Advocate did not articulate why that decision of the Taxing Master should be faulted. The learned Advocate, it would seem took over the conduct of the 1st Defendant after the defence had been filed by the previous Advocate. Indeed even going by the record of the Bill of Costs it would seem that the Advocate only acted for the 1st Defendant in respect to an injunction application before he was succeeded by another Advocate appointed by the 1st Defendant. I therefore, in view of what I state above, decline to interfere with the taxation of the instruction fee. There is no error of principle in the taxation of that item.

11. On all the other items on the Bill of Costs the Taxing Master stated the basis of her taxation from the remuneration order and, in the absence of the Advocate’s submission on these items, I find I cannot fault the Taxing Master’s exercise of her discretion.

12. In the end, the Chamber Summons dated 28th July 2018 is without merit and it is dismissed with costs to Kenya Sugar Research Foundation.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 9TH day of MAY, 2019.

MARY KASANGO

JUDGE

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

Sophie **COURT ASSISTANT**

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

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