



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO. 51 OF 2015**

**GIDEON ONGONO BARONGO**

**T/A BARONGO OMBASA ADVOCATES ..... APPLICANT**

**VERSUS**

**JIANGXI ZHONGMEI ENGINEERING**

**CONSTRUCTIONS & CO. LIMITED ..... RESPONDENT**

**RULING**

1. This is a reference by the applicant dated 19/10/2017 objecting to the decision of the Deputy Registrar on the taxation on the bill of costs dated 5/8/2015 on 24/8/2017 and specifically on item 1 and 2 thereof.

2. The applicant complains that the Deputy Registrar failed to appreciate the amount he was entitled to under instruction fees to wit Kshs 120,000/- for the first Kshs 100,000/- and 2% for the additional 888,653 which amounted to Kshs 137,773.

3. The above argument applied in equal force to files number Miscellaneous 52, 53 and 54 although the fees demanded therein were different.

4. The parties agreed to determine these references by way of written submissions which I have had occasion to peruse. The Respondent has opposed the same vide the grounds dated 31/5/2018 in which it states that the issues at the Industrial Court were not complex and that the only labour done by the applicant was to enter appearance and file defence. In its view therefore the amount arrived at by the taxing master was adequate and reasonable.

5. I have perused the said bills together with the reasoning by the taxing master. Its true that this court has the discretion to interfere with the decision of the taxing master if it finds the same to have been based on wrong principles or the court misdirected itself and or failed to take into consideration such matters which it ought to have considered – see *Mbogo and Another Vs Shah (1968) E.A. 93*.

6. In her ruling the Deputy Registrar on 24/8/2017 stated that

***“ In this matter the Applicant ceased acting before judgment or settlement would be reached. He has billed his fees at Kshs 275,254 against the amount claimed by the Plaintiffs/claimants.***

***Instructions fee is assessed having regard to the case and labour required, the number and length of paper to be perused, the nature and importance of the matter, the amount or value of the subject matter, the interest of parties, complexity of the matter and the general administration of justice. The award must be fair and reasonable. In essence, instructions fees must be computed on the footing of the work done bearing in mind that the Applicant is entitled to his fees as this is his livelihood.”***

7. The taxing master proceeded to cite the authority of *Southern Credit Bank Vs Kingsway Motors Ltd (2008) E.A.*

9. In my view I find that the Deputy Registrar did not misdirect herself. Its not disputed that all that the applicant did was to enter appearance, file defence and cease acting. By then it is assumed that the client instructed another counsel to act for it or it proceeded to the logical conclusion of the matter. Obviously, there, it must have incurred costs subsequently. That cost was still a burden to it.

10. Neither has this court been shown any extra work done by the applicant apart from filling the appearance and the defence.

11. The fees taxed in my view was commensurate to the work done. As was found in the above case of Southern Credit Bank (Supra) it is not

necessarily obvious that the instructions fees ought to be pegged on the claim in the plaint alone. There are other factors that militate against such approach.

12. In the presence I hold that the taxing master did not error in her approach. Neither did her calculation so disadvantaged the applicant taking into consideration the labour that was involved.

13. The refence is hereby disallowed with no order as to costs. The same applies to Numbers 52, 53 and 54 of 2015.

**Delivered, signed and dated at Kitale on this 17<sup>th</sup> day of July 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**17/7/18**

**In the presence of:**

**Barongo for Applicant**

**No appearance for thew Respondent**

**Kirong – Court Assistant**

**Ruling read in open court.**