



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPL. NO. 480 OF 2014

AMOLO & KIBANYA ADVOCATES.....APPLICANT

V E R S U S

SAMSON KEENGU NYAMWEYA.....RESPONDENT

RULING

1) The subject matter of this ruling is the chamber summons dated 13.6.2018 taken out by **Samson Keengu Nyamweya**, the Respondent herein. In the aforesaid summons, the Respondent sought for the following orders:

i. THAT the decision of the taxing officer made on 2nd July 2015 be set aside varied/and or reviewed.

ii. THAT the certificates of costs issued by the taxing officer herein be set aside and or varied.

iii. THAT the honourable court be pleased to re-assess due to items No. 1 and 2 of the advocates in respect of the said Bill of Costs and make findings on the same.

iv. THAT the costs of the application be provided for.

2) The respondent/applicant filed the supporting affidavit he swore in support of the application. When served with the aforesaid application, the firm of Amolo & Kibanya Advocates filed the replying affidavit of **Neville Walusala Amolo** to oppose the summons.

3) When the summons came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the summons disposed of by written submissions. I have considered the grounds stated on the face of the summons and the facts deponed in the rival affidavits. It is the submission of the respondent/applicant that the taxing officer erred by failing to apply the relevant principles of taxation set under the **Advocates (Remuneration) Order**. It is pointed out that the taxing officer failed to indicate the figures taxed off in the bill of costs for every and each item. It is further argued by the respondent/ applicant that the taxing officer failed to take into account the work done by the advocate in the subject matter and the applicant's submissions.

4) The applicant/respondent's law firm of Amolo & Kibanya Advocates, strenuously opposed the summons. It is the respondent's submission that on several occasions the respondent/applicant has been hellbent to frustrate the advocates/respondents from recovering the taxed advocates' costs. The Applicant/Respondent was accused of failing to elaborate in the application the principles which were not considered in determining the applicants/respondent's Bill of Cost.

5) Having considered the competing arguments, it is apparent that the main issue which commends itself for determination is the question as to whether the advocates bill of cost was taxed in accordance with the applicable principles and schedule in **Advocates (Remuneration) Order** and whether the sum awarded of ksh.4,278,490 is exorbitant.

6) The history behind this reference is that Samson Keengu Nyamweya, (respondent/applicant) was sued as the 1st defendant in Nairobi H.C.C.C 229 of 2008. He was represented by the firm of Ashimosi Shitambasi & Associates. The matter was eventually withdrawn. The applicant/advocate then filed a Bill of Costs whereof the advocate sought for the taxation of the instructions fee.

7) By a ruling dated 11.12.2013, the party and party Bill of Costs was taxed at ksh.2,850,172/96 under Schedule VI Part B of the Advocates Remuneration Order, 2006. The Advocate/client Bill of Costs shall be party and party costs raised by ½. In this case the advocates costs was calculated as follows:

$$\text{Ksh.2,850,172/96} + (1/2 \times 2,850,172/96) = 4,275,259/44.$$

8) It is the submission of applicant/respondent that in H.C.C.C. 229 of 2008, there were two advocates in the matter and the applicant only filed a notice of change of advocates and attended court when the matter was withdrawn, therefore the taxing officer failed to appreciate that fact. It was pointed out that the taxing officer did not take into account the work done by the advocate and that she did not consider the applicant's submissions.

9) It is not in dispute that the learned taxing officer in assessing the advocate/client Bill of Costs took into account the fact that in the parent file i.e. H.C.C.C no 229 of 2008, party and party costs was taxed at ksh.2,850,172/96. The learned taxing officer also took into account the fact that under Schedule VI part B of the Advocates Remuneration Order, 2006 the advocates fees would be ascertained by adding half the party and party costs. I am therefore satisfied that the learned taxing officer considered all the relevant factors in assessing the Advocate/Client Bill of Costs. The figure award is not exorbitant.

10) In the end, I find no merit in the summons. The same is dismissed with costs to the applicant/respondent.

Dated, Signed and Delivered in open court this 7th day of December, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent