



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL NO.136 OF 2012

KIRU TEA FACTORY.....APPELLANT

VERSUS

JOSEPH GIOCHE KURIA.....RESPONDENT

RULING

1. The Applicant filed a Chamber Summons brought under the provisions of Rule 11(2) of the Advocates (Remuneration) Order;
2. The Applicant prayed for the following Orders;
 - (i) The court be pleased to set aside and review the decision of the taxing officer regarding the taxation on items 1, 3, 8, 9, 16, 20, 21, 22, 24, and 25 of the Party and party Bill of Costs dated the 12/04/2016;
 - (ii) The costs of the application be provided for.
3. At the hearing hereof Learned Counsel for the applicant **James Njega Nderi** relied on the supporting affidavit that he made on the 18/10/2016 and also made oral submissions; hereunder is a summary of the presentations made on behalf of the applicant;

THE APPLICANT'S CASE

4. The applicant is seeking to set aside and review of the decision of the taxing master; the Bill was taxed by the Deputy Registrar on the 23/09/2016; being dissatisfied an objection was made vide letter dated 1/09/2016; the Deputy Registrar responded and gave her reasons set out in the Ruling dated the 5/10/2016; that the application was within the time limits of 28 days; that the respondents were absent but had been duly served with the Hearing Notice for the hearing of the instant application and the Affidavit of Service was on record;
5. It was the applicants contention that the formula for calculating the instruction fee under the relevant Advocates Remuneration Order (ARO) was based on the value of the subject matter which was known from the pleadings; that the suit was for a liquidated sum and also involved a prayer for damages;
6. On item 3 the folios was wrongly restricted to the number of pages and that the taxing master applied the 2009 ARO instead of the 2014 ARO;

7. As for the other items complained of that is numbers 8,9,16,20,21,22, 24 and 25 these ought to have been allowed as they were within the minimum figures as set out in the ARO.

8. Counsel prayed for the application to be allowed.

ISSUES FOR DETERMINATION

9. Taking into consideration the above submissions this court has framed the following issues for determination;

(i) Whether the application was filed within the stipulated time frame;

(ii) Whether this court should interfere with the decision of the taxing master;

(iii) Costs.

ANALYSIS

10. This a reference on a decision of a taxing master; it is trite law that a court will only interfere with the award of the taxing master if it is demonstrated that the decision was based on an error of principle; or that the award is found to be exceedingly high or exceedingly low as to amount to an injustice to one party or the other; Refer to the Court of Appeal decision in **Premchand Raichand & Anor vs Quarry Services of East Africa Ltd and Others [1972] 162.**

11. The applicant being successful presented the Bill of Costs which was taxed on the 23/09/2016 and a Certificate of Costs issued; being dissatisfied with the outcome, vide a letter which is dated the 1/09/2016 the applicant through its advocates objected to the decision of the taxing master; which letter was filed in court on the 3/10/2016; when calculating the time this court shall overlook the date indicated on this letter of objection and shall deem the date to be a typographical error; the date of filing of the letter of objection has instead been taken into consideration; upon receiving the reasons on the 11/10/2016 the applicant proceeded to file the reference herein on the 18/10/2016;

12. This court is satisfied that the reference was filed in a timely manner and is found to have been filed within the period of fourteen (14) days as set out in the Advocates (Remuneration) Order; and is therefore within time;

13. The main items of contention are the instruction fee, the perusal fee and the amounts awarded for attendance; the instruction fee claimed was Kshs.77,000/- and this amount was taxed down to the sum of Kshs.35,000/-; the applicant contends that the value of the subject matter can be ascertained from the pleadings; the taxing master in its ruling noted that the subject value of the subordinate court was not the subject of the appeal;

14. This court has had occasion to peruse the appeal and notes that the subject matter of the appeal is the wrongful striking out of the defence by the trial court; the taxing master made a correct finding that the subject value of the trial court was not the subject of the appeal; the taxing master noted that the appeal had been filed in 2012 and correctly applied the ARO for 2009 which was applicable; the minimum fee stipulated therein was Kshs.6300/-; in exercising her discretion the taxing master allowed the sum of Kshs.35,000/- as a reasonable amount;

15. This court reiterates that the test for interference is where an error of principle may be inferred; this court is satisfied that the taxing master correctly used the 2009 ARO as a guide; and properly exercised her discretion in making an award that was reasonable for the instruction fee; the item shall remain unchanged;

16. On item 3 which is for perusal of the Record of Appeal; the applicants contention is that the taxing master used the 2009 ARO as opposed to the 2014 ARO; with due respect this cannot be the position the

ruling clearly indicates that the ARO used to guide the taxing master was that of 2014 which provides for Kshs.50/- per folio whereas the 2009 ARO provides for the sum of Ksh.42/-; this item will also remain unchanged;

17. The items 8,20,21 and 22 related to attendances before the Honourable Judge which were taxed each at Kshs.1100/-; this court is satisfied that the taxing master gave good reasons for arriving at the figure; which figures this court is also disinclined to interfere with as it is reasonable and not manifestly low, at all;

18. Lastly, the applicant has not satisfied this court that the items listed as 16 to 25 warrant interference;

FINDINGS & DETERMINATION

19. For the afore-going reasons this court finds no good reason that justifies interference with the taxing masters decision; all the items shall remain unchanged;

20. The reference is found lacking in merit and is hereby dismissed;

21. The applicant shall bear his own costs.

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 30th day of March, 2017.

HON.A. MSHILA

JUDGE