



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 350 OF 2016**

**DICKSON JOMO KEBATTA.....PLAINTIFF**

**VERSUS**

**THE DEPOSIT INSURANCE CORPORATIONS**

**IN LIQUIDATION OF MIDDLE AFRICA FINANCE LTD.....DEFENDANT**

**RULING**

1. By this Chamber Summons application dated 20<sup>th</sup> June 2019, Dickson Jomo Kebatta (the Respondent) prays for orders as follows:

- 1. That this Honourable Court be pleased to allow this reference against the decision on taxation of the Taxing Officer Honourable D. Wasike made on 18<sup>th</sup> April, 2019;***
- 2. That the Ruling on Taxation delivered by the Taxing Officer Honourable D. Wasike on 18<sup>th</sup> April 2019 with respect to Item 1 on instruction fees on the Applicant's Bill of Costs dated 27<sup>th</sup> November, 2017 be set aside;***
- 3. That Item 1 of the Applicant's Bill of Costs dated 27<sup>th</sup> November 2017 be assessed by this Honourable Court in such other sums as may appear to be reasonable;***
- 4. That in the alternative, this Honourable Court remits Item 1 of the Applicant's Bill of Costs dated 27<sup>th</sup> November 2017 to another Taxing Officer for re-taxation;***
- 5. That the costs of and occasioned by this Reference be provided for.***

2. The Reference which is supported by the Respondent's Affidavit sworn on the same day is premised on the ground that the Learned Taxing Officer misdirected herself in making an assessment of the said item of the Applicant's Bill of Costs as to arrive at an error of principle with regard to the same.

3. The Respondent avers that the Taxing Officer failed to take into account the nature of the matter, the amount involved, the interests of the parties involved as well as the general conduct of the proceedings in assessing the said Item 1 at Kshs 679,622.42/- an amount which was exorbitantly high in the circumstances.

4. The application is opposed. By a Replying Affidavit filed on its behalf by Joseph Mathenge Kihara Advocate, the Law Firm Muniyithya, Mutugi, Umara and Muzna Co. Advocates (the Applicant) avers that the Court only awarded the sum of Kshs 628,862.45/- and that in awarding the sum of Kshs 628,862.45/-, the Taxing Officer made calculations as per Schedule 6 of the Advocates Remuneration Order (2014) and that the sum of Kshs 679,622.42/- cited in the Reference is an imagination of the Respondent.

5. I have perused and considered the Reference herein and the response thereto. As Ojwang J (as he then was) stated in **Republic –vs- Ministry of Agriculture & 2 Others Ex Parte Muchiri W. Njuguna & 6 Others (2006) eKLR**:

*“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a Taxing Officer, particularly, where he is an officer of great experience merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other... The Court cannot interfere with the taxing officer's decision on taxation rules unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference*

*that it was based on an error of principle. Of Course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge.”*

6. In the matter before me, the Respondent is solely aggrieved by the taxation of the Item No. 1 on the instructions fees of the Applicant's Bill of Costs dated 27<sup>th</sup> November 2017. It is the Respondent's case that the taxation of the said Item at Kshs 679,622.42/- is manifestly excessive, unreasonable and unconscionable in that the same was not based on the principal sum of Kshs 100,000/- which had been secured by the facilities offered by the Defendant in the main suit.

7. In her Ruling on the Bill of Costs dated 18<sup>th</sup> April 2019, the Honourable D. Wasike, Deputy Registrar states as follows in respect to the said Item No. 1.

***“Item 1***

***The value of the subject matter at Kshs 35,989,211.95/- is not disputed. It is noted that this matter was determined summarily hence pursuant to paragraph 1 (b) the basic fee shall (be) 75% of the fee prescribed under 1 (b).***

***Therefore, the fee scale is: -***

First Kshs 1,000,000.00 Kshs 120,000.00/-

Next Kshs 19,000,000.00 Kshs 380,000.00/-

Balance of Kshs 15,989,211.95 Kshs 239,838.17/-

Total Kshs 739,838.17/-

Less 15% Kshs 110,975.72/-

Total Kshs 628,862.45/-

***I tax this item at Kshs 628,862.45.00/- and tax off Kshs 1,810,705.55/- as there is no reason to increase the same noting that the suit was determined summarily.”***

8. From a perusal of the record therefore, the said Item No. 1 was not taxed at Kshs 679,622.42/- as alleged by the Respondent but Kshs 628,862.45/- as shown hereinabove. Again while the Respondent faults the Honourable the Deputy Registrar for failing to base the principal sum on the sum of Kshs 100,000/- which had allegedly been secured by the facilities offered by the Defendant, it was clear from a perusal of the record and as stated by the Honourable Deputy Registrar in her Ruling aforesaid that the value of the subject matter was not disputed by either party.

9. In his written submissions filed before the Honourable Deputy Registrar of this Court on 6<sup>th</sup> August 2018, the Plaintiff/Respondent stated on the issue of the Instruction fee as follows:

***“Item 1- Instruction Fee***

***Guided by the provisions of Schedule 6 Advocates (remuneration) (Amendment), Order 2014 under Item 1 (b) being a matter that a defence was filed (sic), and where the value of the suit is 35,989,211.95/- the instruction fee should be a sum of Kshs 679,622.42/- the same having been computed as follows.....”***

10. From the above passage, it was not only clear that the Respondent had himself put the value of the subject matter at Kshs 35,989,211.95/-, but that his computation gave a higher figure by more than Kshs 50,000/- as the amount due as instruction fees. How the Respondent can turn around and attack the Honourable Deputy Registrar for saving him the sum of Kshs 50,000/- is as mind-boggling as it can be.

11. Suffice it to say that I did not find any basis for the allegation by the Respondent that Item No. 1 of the Bill of Costs as taxed by the Honourable Deputy Registrar was manifestly excessive, unreasonable or unconscionable. The result is that I find no merit in the reference. The same is dismissed with costs.

**Dated, signed and delivered at Malindi this 24<sup>th</sup> day of July, 2020.**

**J.O. OLOLA**

**JUDGE**