



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**MISC. CIVIL APPLICATION NO. 346 OF 2012**  
**V. CHOKAA & CO. ADVOCATES ..... APPLICANT**  
**V E R S U S**  
**MUNICIPAL COUNCIL OF MOMBASA ..... RESPONDENT**

**RULING**

1. This is a reference of the taxation of Advocates Client Bill of Costs.
2. The Applicant V. Chokaa & Company Advocates, who is the Advocate, objects to one item taxed by the taxation master. That is the instruction fees.
3. The case to which the Bill of Costs relates to is where the Advocate represented the client, Municipal Council of Mombasa. The claim was for Kshs. 1,610,498,274.95. It is not denied that before the hearing that claim was settled at Kshs. 110,000,000/-. The objection by the Advocate to taxation is that the Learned Taxing Master erred to have taxed using the amount of the settlement rather than the amount in that claim.
4. This is how the learned taxing master dealt with that item-

**“I have considered parties submissions on this particular item and thoroughly gone through the Remuneration Order (2006). I am in agreement with the Respondent submissions save for the calculations of the taxed amount. It is trite law that where a consent judgment is entered, the subject matter automatically shifts from the claim captured in the Plaint to the one agreed on the consent. As such, the taxable amount on Item 4(a) is Kshs. 110,000,000.00 and not 1,610,498,274.95, as alluded by the Applicant.”**

5. Before adding my voice to that taxation I will first respond to the clients submissions in opposition to this reference.
6. The client submitted that the Advocates application in this reference is incompetent for having failed to follow the procedure set under paragraph 11 of the Advocates (Remuneration) Order of Cap 16. The client referred to paragraph 11(1) of that Order which states-

**“Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.”**

7. The client proceeded to say that it is only after reasons are given by the taxing master that a party can file a reference.
8. I am in agreement with the Advocates in response to that objection. The Advocate submitted that at the time the Taxing Master rendered her decision on the taxation the Taxing Master gave reasons for that taxation.
9. I have perused the Taxing Master's decision on taxation and I do confirm that the taxing master gave her reasons and indeed if any other reasons were required of her she would be right to say that her reasons are in the decision. The objection of the client in my view has no basis.
10. The client further objected on the ground that the Advocate in the reference sought the instruction fees be set aside or reviewed, that is the Taxing Master's order, yet such an order was not annexed to the application.
11. My simple response to that objection is that the taxing master's decision, the subject of this reference is in the file and most helpfully it is in typed form. To insist that the reference fails because the taxation order is not annexed to the reference application is absurd and outlandish. The Court is able to look at the decision of the taxing officer as it is in this file without insisting it be specifically attached to the reference application. That argument by the client is rejected.
12. The court of Appeal considering submission that an application for review in the High Court ought to have failed for lack of an extracted order had this to say in the case **SADRUDIN KURJI & ANOTHER –Vs- SHALIMAR LIMITED & 2 OTHERS [2008]eKLR-**

**“Starting with the point raised concerning the non-inclusion of an extracted version of the order sought to be reviewed, no provision was cited which required an Applicant to include such a copy in an application for review. That being our view of the matter, we do not think the point is one of law. If there was a need for its inclusion that would merely be a procedural requirement.”**

13. Similarly I reject the objection that the reference is defeated by the Advocate's failure to annex an affidavit with the application. The Advocate filed the affidavit subsequently and that in my view suffices to support the application. To hold otherwise would be to elevate procedure to unacceptable level and would be contrary to the provisions of Article 159(2)(d) of the Constitution that-

**“Justice shall be administered without undue regard to procedure technicalities.”**

### **ANALYSIS OF THE REFERENCE**

14. The Advocate's contention that the taxing master misconstrued the provisions of Schedule VI, 1, (iii) (b) of the Order is in my view misconceived. The parties are in agreement that there was compromised judgment for lesser amount than that which was in the Plaint and that being so the Taxing Master was correct to have paid regard to what is stated in Schedule VI, 1(iii) (b). That paragraph provides-

**“(b) To sue in any proceedings described in paragraph (a) where a defence or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties.”** (underlining mine)

That paragraph can be given no other interpretation other than that given by the Taxing Master. The instruction fees could only have been taxed on the amount settled in the claim. The learned Taxing Master was right. It is that reason the reference is rejected.

15.The Notice of Motion dated 4<sup>th</sup> March 2013 is hereby dismissed with costs to the Respondent.

**DATED and DELIVERED at MOMBASA this 5<sup>TH</sup> day of MARCH, 2015.**

**MARY KASANGO**

**JUDGE**