



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAJIADO

MISCELLANEOUS APPLICATION NO. 89 OF 2019

MWAGAMBO & OKONJO ADVOCATES.....APPLICANT

VERSUS

MINISTER FOR PUBLIC WORKS, ROADS AND TRANSPORT,

COUNTY GOVERNMENT OF KAJIADO.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF KAJIADO.....2ND RESPONDENT

RULING

What is before Court for determination is the Applicant's Chamber Summons Application dated the 1st October, 2019 brought pursuant to Rule 11(2) of the Advocates Remuneration Order 1962 and Section 48 and 51 of the Advocates Act. The Applicant seeks for the following orders:

1. That this Honourable Court be pleased to set aside the decision of the taxing officer dated 16th July, 2018.
2. The Applicant's Bill of Costs dated 28th March, 2018 be taxed at such amounts as this Honourable Court may deem appropriate.
3. That the costs of this Application be provided.

The Application is premised on the grounds on the face of it and the supporting affidavit of EMMANUEL MWAGAMBO MWAGONAH who is the managing partner at Mwangambo & Okonjo Advocates, the Applicant herein. He avers that the Applicant filed their Bill of Costs in the matter of Mwangambo & Okonjo Advocates Vs The Minister for Public Works, Roads and Transport, County Government of Kajiado and the County Government of Kajiado, Miscellaneous ELC Cause No. 114 of 2018 dated 28th March, 2018. He explains that the Deputy Registrar, being the taxing master in the matter rendered a ruling on the Applicant's Advocate – Client Bill of Costs aforementioned on 16th July, 2018. He states that the Applicant filed an application dated the 29th August, 2018 seeking to file an appeal and notice of objection on the ruling, out of time. Further, the ruling to the said application was delivered in open court on 18th September, 2019 where the Applicants were allowed to file their notice of objection and reference within 14 days after the said ruling. He deposes that the Applicant wrote a notice of objection vide a letter dated 18th September, 2019 to the Deputy Registrar. He contends that the Applicant appeals on the ruling on the Bill of Costs delivered on 16th July, 2018 based on the grounds that the taxing master misdirected himself in the nature and extent of the pecuniary interest involved by failing to consider that the amount of the subject matter as specifically pleaded in the Plaintiff including the Valuation Report on the subject matter which was produced in court was the sum of Kshs. 258,000,000, thus awarding a considerably low and erroneous figure. Further, that the defence was filed against a specifically pleaded amount of Kshs. 258,000,000. He reiterates that the taxing master misdirected himself on the labour and responsibility entailed in preparation of the pleadings in the matter thereby awarding a low instruction fee. Further, the taxing master failed to consider the relevant circumstances and the court process server's expenses in considering the amount to be taxed for attendances at the registry to file court documents.

The Respondents opposed the application and filed a replying affidavit sworn by ISAAC OMEKE MIENCHA an Advocate acting on their behalf where he deposes that the application is frivolous, vexatious and an abuse of the court process. He contends that the Taxing Master taxed the Bill of Costs as per the scale in accordance with Schedule V1 of the Advocates Remuneration Order. He sought for the reference to be dismissed.

The reference was canvassed by way of written submission.

Analysis and Determination

Upon consideration of the Chamber Summons Application including the ridding affidavits and submissions, the only issue for determination is whether the Honourable Court should set aside the decision of the taxing officer dated 16th July, 2018.

The Applicant in their submissions reiterated their claim and contended that the instructions fees should be taxed based on the value of the subject matter as pleaded. Further, that the instruction fees of Kshs. 300,000 was inordinately low considering the value of the subject matter to be Kshs. 258,000,000. They further submitted that the court should take into consideration the complexity of the matter. Further, that nothing barred the taxing officer from referring to the documents on the value of the suit land which is Kshs. 63, 000,000/=. They submitted that the taxing officer erred in principle by failing to consider the process server's expenses in considering the amount to be taxed for attendances at the registry to file court documents. They sought for items 5, 21, 27 and 32 to be taxed afresh. They submitted that instructions fees should be taxed at Kshs. 5, 585, 000/=. Further that items 5, 21, 27 and 32 should be allowed at Kshs. 1500 as per the Advocates Remuneration Order.

They relied on the decisions of **KTK Advocates V Baringo County Government (2017) eKLR; Joreth Ltd Vs Kigano & Assoc Civil Appeal No. 66 of 1999; Sammy Some Kosgei V Grace Jelel Boit (2014) eKLR; Masore Nyangau & Co. Advocates V Kensalt Limited (2019) eKLR; Orion East African Ltd V Permanent Secretary of Agriculture & Another (2013) eKLR; and Moronge & Company Advocates V Kenya Airports Authority (2012) eKLR** to buttress their averments.

The Respondents in their submissions contended that the taxing officer did not err in principle while taxing the said Bill. Further, that there was no valuation report of the suit land as claimed by the Applicant. They insisted that the Bill of Costs as taxed should be upheld. They relied on the decision of **Joreth Limited V Kigano & Associates [2002] eKLR; Premchand Raich and Limited Vs Quarry Services of East Africa Limited (1972) EA 162 and Republic Vs Minister for Agriculture & 2 others ex parte Samuel Muchiri W/ Njuguna & 6 Others to support their arguments.**

In the case of **Joreth Limited V Kigano & Associates [2002] eKLR** the court held that:-

“ We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

Further in Republic v Ministry of Agriculture and 2 others: Exparte Muchiri W'Njuguna & others (2006) eKLR it was held as follows: “The court cannot interfere with the taxing officer's decision on taxation 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 facts”

I note the Applicant's main contention is on the instruction's fees and items 5, 21, 27 and 32 on the Bill of Costs. Upon perusal of the Plaintiff in the main suit, I note the Plaintiff sought for special damages for Kshs. 258, 000,000. Further, in the judgement dated 23rd January, 2018, the Court Awarded Kshs. 10,000,000/= which included general and exemplary damages to the Decree holder. Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014 clearly provides on how the value of the subject matter should be determined while assessing instructions fees and these are from the pleadings, judgment or settlement between the parties. In the current scenario, the taxing officer determined the instructions fees based on the judgement of the Court. It is trite that special damages are supposed to be proved and in the case that culminated in this reference the Court disregarded the Kshs. 258,000,000 that the Decree holder initially sought. To my mind and associating myself with the decisions cited above, I do not find that the taxing officer erred in principle by determining the instructions fees based on the judgement and not on what was pleaded as special damages. In the circumstances, I will proceed to uphold the determination of the taxing officer as regards the instructions fees.

As for the contention on items 5, 21, 27 and 32, I note the Advocates Remuneration Order 2014 allows for the same and find that the Taxing Officer indeed erred in principle in failing to award them.

It is against the foregoing and in the interest of justice that I find that there were a few errors of principle made by the taxing officer. I consequently partially allow the reference and remit the Party and Party Bill of Costs for fresh assessment of items 5, 21, 27 and 32 only, by the Taxing officer of the court.

Costs of the reference is awarded to the Applicant.

Dated Signed and Delivered at Kajiado this 17th Day of September, 2020.

CHRISTINE OCHIENG

JUDGE