



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 930 of 2004**

**NATIONAL WATER CONSERVATION  
& PIPELINE CORPORATION.....PLAINTIFF  
- VERSUS -**

**SOLONGO ENTERPRISES LIMITED .....1<sup>ST</sup> DEFENDANT**

**DEVELOPMENT BANK OF KENYA LIMITED.....2<sup>ND</sup> DEFENDANT**

**VALLEY AUCTIONEERS .....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is the 1<sup>st</sup> defendant's chamber summons dated 6<sup>th</sup> October 2011. The 1<sup>st</sup> defendant has presented a reference under rule 11 (2) of the Advocates (Remuneration) Order challenging a decision of the taxing master dated 26<sup>th</sup> May 2010. The taxation related to the defendant's bill of costs dated 19<sup>th</sup> November 2009. The bill was allowed in the sum of Kshs 64,506. The 1<sup>st</sup> defendant prays that the taxation be set aside and that the court do re-assess the fees.

2. There are two primary grounds: that the taxing master has failed to supply the applicant with the reasons for the taxation; and, that she misapprehended the value of the subject matter of the suit. The applicant's case is that the taxing master erred in principle and arrived at an erroneous decision. Those matters are buttressed further in a deposition sworn by Wilfred Mutubwa on 25<sup>th</sup> October 2011.

3. The plaintiff contests the application. The plaintiff's case is that the reference is incompetent for failure to annex the reasons for the taxation.

4. I have heard the rival submissions. In the case of *First American Bank of Kenya Vs Shah and others* [2002] E.A.L.R 64 Justice Ringera delivered himself thus at page 69

*"First, I find that on the authorities, this 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 so manifestly excessive as to justify an inference that it was based on an error of principle"*

See also *Steel Construction Petroleum Engineering (E.A) Ltd Vs Uganda Sugar Factory* [1970] E.A 141.

5. Paragraph 11 (1) and (2) of the Advocates (Remuneration) order states as follows;

*"11. (1) 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 of which he objects.*

(2) *The taxing officer shall forthwith record and forward the*

*reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection”.*

6. Failure to record such reasons or to forward them to the objector would be itself a good ground to allow a reference. See Kipkorir Titoo & Kiara Advocates Vs Deposit Protection Fund Civil Appeal, 220 of 2004, Court of Appeal (unreported), Kerandi Manduku & Company Vs Gathecha Holdings Limited [2006] e KLR, Behan & Okero Advocates Vs National Bank of Kenya Limited Kisumu, High Court Miscellaneous Application 40 of 2007 [2008] e KLR.

7. The High Court is a court of record. On 27<sup>th</sup> May 2010, the taxing master, Hon. Rose Ougo (as she then was) delivered a decision on taxation in a considered ruling. The applicant has not found it fit to extract a copy of that ruling or to attach it to the supporting affidavit. But I note the taxing master stated as follows in the material part;

*“The plaint filed on the 18/9/2004 doesn’t give the value for the mortgage for opening (sic). Its (sic) apparent that counsel estimated the value for the annexures in the pleading from the plaint amended of HCCC 625/04 in and Mrs. Otieno affidavit (sic). The respondents have asked this court to take the said sum as the subject matter and award sum of 262,000/- as provided under schedule (1) (b).*

*I do note that the subject matter of the trial was not the value of the property but the plaintiff sought injunction order to restrain the defendants from disposing off or allocating the property to another person. I find that the defendant are not justified using the value of the subject matter to granting their fees. The suit was not heard. What came up before the Hon. Judges were the applications that were filed. I find it unreasonable to use the sum of 14,800,000/- to get their instruction fees. Its clear that counsel did prepare for trial, he took instructions from the client and filed their replying affidavits and annexure. The case for the pleading (sic) was not complex .....*”

8. The reasons for the taxation were thus in the ruling. Paragraph 11 of the Advocates (Remuneration) Order contemplated situations where a decision of the taxing master was unaccompanied by the reasons. It would be to turn logic on its head to ask the taxing master for reasons where they are clearly stated in a considered ruling. See Ahmednasir Abdikadir & Co Advocates Vs National Bank of Kenya Limited (2) [2006] 1 E.A. 5. The ground for review on the failure to supply reasons thus collapses. But there is also another matter: by failing to annex that decision giving the reasons for the taxation, the present chamber summons is defective and on a quicksand. See Muriu Mungai & Co Advocates Vs New Kenya Co-operative Creameries Ltd Nairobi, High Court Miscellaneous Application 127 of 2007 [2012] e KLR. The entire reference is thus fatally flawed and incompetent. There would be no foundation upon which to determine whether the taxing master erred in principle as to call for intervention by this court. The reasons having then been available way back on 27<sup>th</sup> May 2010, the present motion was also filed out of the prescribed time. The motion is in the result incurably defective. Having reached that conclusion, it would be futile to examine the remainder of the application. In the result, the 1<sup>st</sup> defendant’s reference by way of chamber summons dated 6<sup>th</sup> October 2011 is hereby dismissed. In the interests of justice, I shall not order costs.

It is so ordered.

**DATED and DELIVERED at NAIROBI this 6<sup>th</sup> day of November 2012.**

**G.K. KIMONDO  
JUDGE**

**Ruling read in open court in the presence of**

No appearance for the Plaintiff/Respondent.

Ms Ngereza for the 1<sup>st</sup> Defendant/Applicant.