

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MISC (REFERENCE) APPLICATION NO. E041 OF 2024

(FORMERLY NYAHURURU HIGH COURT MISC (REFERENCE)

APPLICATION NO E014 OF 2023

IN THE MATTER OF PARTY TO PARTY BILL OF COSTS

AND

IN THE MATTER OF REFERENCE FROM THE RULING OF THE

TAXING OFFICER OF THE HIGH COURT AT NYAHURURU

BETWEEN

JOHN MUNENE MAINA.....APPELLANT/APPLICANT

-VERSUS-

PETER MURAGE KAMANJA.....RESPONDENT

RULING

1. Through Chamber Summons dated 6th June 2023, the Applicant approached the court seeking orders that:

a) That this honourable court be pleased to set aside the decision of the taxing master delivered on 13.5.2022 by the Hon. V. Kiplagat, Deputy Registrar in its entirety together with the reasons thereof.

b) THAT this honourable court be pleased to exercise its discretion and to tax the bill of costs dated 12.6.2021 itself.

c) THAT in the alternative to prayer No. 2 above, the bill of costs dated 12.6.2021 be remitted to the taxing officer for taxing afresh.

d) THAT the costs of this application be costs in the cause.

2. The application is premised on grounds that the Taxing Officer through the Ruling of 13/05/2022 taxed the Bill of costs at Kshs.166,950 which was an error in principle as he arbitrarily did the assessment without proper basis or discretion as in item 1 of the Bill of Costs he failed to consider that the amount was primitive which was never awarded at the discretion of the court, a value that could have been determined by looking at the pleadings.
3. That amounts on various items were excessive and on item 4 an award was made despite there having been no attendance; excessive amounts were awarded on perusals and filing fee without proof of documents having been filed.
4. That the taxing master assessed without proper basis or discretion getting up fees without taking into consideration that getting up fees are subject to the award on item 1, amounts that were primitive and he did award amount on instructions to drawing and filing Bill of Costs whereas the same is not provided for under the Advocates (Remuneration) Order.

5. The application is supported by an affidavit deponed by the Applicant who avers that the Bill taxed as drawn did not give sufficient reasons as to how the taxing officer arrived at the decision. That in erring in principle, it is advised by his advocate, that the taxing officer failed to appreciate that the matter was complex hence obstructed the course of justice.
6. In response there to the Respondent through an affidavit deponed by Nderitu Komu, learned counsel for the Respondent deponed that through the plaint dated 07/02/2013, the Applicant sought for general and punitive damages for false arrest, unlawful detention and malicious prosecution, kshs.10,650 special damages and costs of the suit.
7. That the claim was dismissed by the trial court and on appeal the same was dismissed and costs of the appeal and lower court awarded to the Respondent; and, the High Court stated that had the Applicant proved the case it would have awarded Kshs. 600,000/= as damages hence the value would have been determined from the judgment of the court.
8. That **schedule, 6(A) paragraph 1(b) of the Advocate (Remunerations Amendment) Order 2014**, provides for any value exceeding in kshs.800,000/= and value not exceeding kshs750,000 and instructions fee to be a charge of kshs.90,000/-. Hence the Bill of costs was drawn to the scale and therefore allowed as prayed.

9. The application was disposed through written submissions. I have duly considered the application, supporting and opposing affidavits and rival submissions. In the matter the taxing officer did indicate what was to guide him while exercising the duty of taxing costs. He relied on the case of **Premchand Raichard Ltd & Another v Quarry Services Ltd [1972] EA 162** where the court stated that:

“The complex element in the proceedings which guide the exercise of the taxing officer’s discretion must be specified cogently and with conviction. If novelty is involved in the main proceedings; the nature of it must be identified and set out in a conscientious mode.

If the conduct of the proceedings necessitated the deployment of a considerable amount of industry, and was inordinately time consuming the detail of such a situation must be set out in a clear manner.

If large volumes of documentation had to be clarified, assessed and simplified, the details of such initiative by counsel must be specifically indicated apart of course from the need to show if such works have not already been provided for under a different head of costs.”

10. This court is well disposed that it can only interfere with the decision made by the taxing officer if it is clearly seen

that the judicial officer did not take into consideration relevant matters hence reaching a decision that is untenable.

11. In ***Arthur v Nyeri Electricity Undertakings [1961] EA 412*** the Eastern Court of Appeal emphasized the fact that a court can only interfere with a Taxing Officer's decision, if clearly there is an error of principle.

12. In the stated case the Court of Appeal delivered itself thus:

“Where there has been an error in principle the Court will interfere but questions solely of quantum are regarded as matters with which the Taxing Officers are particularly fitted to deal and the Court will only intervene in exceptional cases.”

Paragraph 22(1) of the Order Provides:

“In all cases in which any other Schedule applies, an Advocate may, before or contemporaneously with rendering a bill of costs drawn as between Advocate and Client, signify to the Client his election that, instead of charging under such Schedule, his remuneration shall be according to Schedule 5, but if no election is made his remuneration shall be according to the scale applicable under the other Schedule.”

13. In ***Makula International V Cardinal Nsubuga & Another [1982] HCB11*** the court stated that:

“The taxing officer should, in taxing a bill, first find the appropriate scale fee in schedule VI, and then consider whether the basic fee should be increased or reduced. He must give reasons for deciding that the basic fee should be increased or decreased. When he has decided that the scale should be exceeded, he does not arrive at a figure which he awards by multiplying the scale fee by a multiplication factor, but places what he considers a fair value upon the work or responsibility involved. Lastly, he taxes the instruction fee, either by awarding the basic fee or by increasing or decreasing it.”

14. A perusal of the record shows that the Respondent filed the Bill of costs against the Appellant who lost the appeal. Services rendered were particularized, amounts to be taxed were given and there was provision for what was to be taxed off. A glimpse of the Ruling shows that at page 79 of the Record of Appeal, what is found is submissions of the plaintiff in the Lower court. The claim per the plaint was for general and punitive damages, kshs.180,000 being unpaid salary and special damages in the sum of kshs.10,650.

15. In submissions tendered, a sum of ksh.810,450 was a proposal alluded to and the court pronounced itself that it would have awarded kshs.600,000. It was imperative for the

taxing officer to give reasons as to how he exercised the discretion to allow the entire sum claimed.

16. On item 2 it would have been a question of ascertaining how many folios the memorandum of appeal consisted of; on item 5, the Record of Appeal was 120 pages and not 180 pages as indicated.

17. It is apparent that the Taxing Officer did not pronounce himself on all items, choosing to state that they were drawn to scale hence allowed the entire sum claimed. This was not sufficient. He was required to act judiciously by giving a reasoned decision. This was a contested Bill of Costs which called upon the Taxing Officer to identify the schedule under which the decision was based so as to justify the amount granted.

18. The upshot of the matter is that the Reference is allowed. Therefore, the Taxing Officer's decision delivered on 13/05/2021 be and is hereby set aside. The Matter is referred to the current Taxing Officer for reconsideration.

19. The error having emanated from the court, each party shall bear its costs.

20. It is so ordered.

Dated, signed and delivered virtually this 4th day of May, 2026.

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L.N. MUTENDE
JUDGE

