



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 164 OF 2010

MUTUKU MUTINGA..... 1ST PLAINTIFF

GLORIA JEAN MUTINGA.....2ND PLAINTIFF

VERSUS

JORETH LIMITED..... 1ST DEFENDANT

GICHUHA INVESTMENT LIMITED..... 2ND DEFENDANT

PETER WAMBUGU MWANGI.....3RD DEFENDANT

RULING

Coming up before me for determination is the Chamber Summons dated 22nd October 2015 in which the Plaintiff/Applicant seeks for the taxation of the following items be set aside and the items be taxed afresh before a different taxing officer:

- a) Item 1 and 125 of the Bill of Costs dated 20th August 2014.
- b) Item 46 and 47 of the Bill of Costs dated 22nd September 2014.
- c) Item 1 and 2 of the Bill of Costs dated 6th January 2015.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the 1st Plaintiff, Mutuku Mutinga, sworn on 22nd October 2015 in which he averred that by an Originating Summons dated 29th April 2009, the Plaintiffs/Applicants filed this suit. He further averred that the suit was heard and judgment delivered on 22nd November 2013 by Lady Justice Mwilu dismissing the suit with costs to the Defendants. He further averred that pursuant to the said Judgment the Defendants/Respondents filed their party and party bills of costs dated 20th August 2014, 22nd September 2014 and 6th January 2015. He added that the bills of costs were duly objected to by his Advocates and that they filed their submissions in respect thereof. He further stated that by a Ruling delivered on 9th September 2015, the taxing master, I. N. Barasa awarded the following:

- i. A sum of Kshs. 300,000/- as instruction fees, Kshs. 100,000/- as getting up fees for trial and Kshs. 174,081/- on other items of the bill of costs dated 20th August 2014.
- ii. A sum of Kshs. 300,000/- as instruction fees, Kshs. 100,000/- as getting up fees for trial and Kshs. 127,401/- on other items of the bill of costs dated 22nd September 2014.
- iii. A sum of Kshs. 300,000/- as instruction fees, Kshs. 100,000/- as getting up fees for trial and Kshs. 74,138/- on other items of the bill of costs dated 6th January 2015.

He further stated that being dissatisfied with the taxation of the above items, he wrote a letter dated 22nd September 2015 through his Advocates requesting to be supplied with the reasons for the decision of the taxing officer. He stated that he was informed that the taxing officer had responded by making a note to the effect that the reasons are contained in the bill of costs. He stated that it is for this failure to give reasons that led them to file this reference.

The Application is opposed. The 3rd and 4th Defendants/Respondents filed their Grounds of Opposition dated 3rd November 2015 stating that the taxing officer exercised a discretion which cannot be challenged in any way unless it was exercised unjudicially and that the taxed costs are not manifestly excessive and as such do not merit this court interfering with this taxation. The 1st and 2nd Defendants/Respondents also filed their Grounds of Opposition dated 6th November 2015 raising the same grounds as those of the 3rd and 4th Defendants/Respondents.

The issue I am called upon to determine is whether or not to set aside the following items:

- a) Item 1 and 125 of the Bill of Costs dated 20th August 2014.
- b) Item 46 and 47 of the Bill of Costs dated 22nd September 2014.
- c) Item 1 and 2 of the Bill of Costs dated 6th January 2015.

and order that the items be taxed afresh before a different taxing officer on the grounds that no reasons were given by the taxing officer in her finding. The relevant legal provision on this issue is **Rule 11 of the Advocates (Remuneration) Order**. It provides that,

“(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 to which he objects.

(2) the taxing officer shall forthwith record and forward to the objector 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 ”

The Courts’ power under **Rule 11 of the Advocates (Remuneration) Order** is meant to be exercised to meet the ends of justice so that the applicant is not barred from filing a reference such as this one. The Plaintiffs/Applicants have produced a copy of their Advocate’s letter dated 22nd September 2015 seeking to be furnished with the reasons for the taxing officer’s ruling. It is true that the taxing officer made a handwritten note thereon to the effect that the reasons for her decision was contained in the body of the bill of costs.

The Court of Appeal in **Kipkorir, Titoo & Kiara Advocates –vs. - Deposit Protection Fund Board [2005] 1KLR 528** gave the implication of a Taxing Officer’s failure to record and furnish reason for her decision as follows,

“If a taxing officer totally fails to record any reasons and to forward them to the objector as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference.”

It would appear that the taxing officer did not supply the Plaintiffs/Applicants with the reasons to her decision after their request in their letter dated 22nd September 2015. However, upon perusal of the Ruling delivered by the taxing officer on 9th September 2015, I hold the view that the taxing officer was quite clear on how she arrived at the amounts that the Plaintiffs/Applicants dispute. The court defined what amounts to “reasons” of taxing officers in the case of **Gathenji & Co. Advocates versus Waihenya & 3 Others Nairobi HCCC No. 721 of 2000** as follows:

“What is referred to as reasons for the taxing officers decision is not more than his ruling on the matter. Since such ruling has been made, signed and delivered by the taxing officer on 2nd October 2001, there was obviously no need to request for such reasons.”

I agree with this position and do hold that the taxing officer’s reasons for her finding were adequately set out in her ruling which was duly communicated to the Plaintiffs/Applicants. I find the taxing officer’s finding to be reasonable, particularly considering that there was no allegation that the amount arrived at was inordinately high. In these circumstances, this Application is hereby dismissed with no order as to costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 17TH

DAY OF MARCH 2017.

MARY M. GITUMBI

JUDGE