



**Nyaundi v Kilgoris Classic Sacco Limited (Cause 1002 of 2015)
[2024] KEELRC 1714 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1714 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1002 OF 2015
K OCHARO, J
JUNE 28, 2024**

BETWEEN

JAMES ORWARU NYAUNDI CLAIMANT

AND

KILGORIS CLASSIC SACCO LIMITED RESPONDENT

RULING

Background

1. The Respondent/Applicant is aggrieved by the ruling of the Taxing Master on the Claimant's Party and Party costs herein delivered on 25th August 2022 and has brought a reference under paragraph 11 of the [Advocates Remuneration Order](#) by way of a Chamber Summons Application dated 2nd February 2023. The Respondent seeks:
 - a. That the decision of the Taxing Master made on 25/08/2022 taxing the party and party bill of costs at Kshs. 206,200/- be set aside, altered and/or reviewed.
 - b. That the costs of the reference be provided for.
2. The Claimant opposed the application through his Replying Affidavit sworn on 20th March 2023.
3. Following the directions of the Court that the application be canvassed by way of written submissions, the Claimant filed submissions dated 5th June 2023; and the Respondent filed those dated 25th May 2023.
4. The application assails the Taxing Master's decision on various grounds, thus; inexplicably she taxed the party and party costs at Kshs. 206,200/-, yet the judgment sum herein is Kshs. 210,000/-; the amount taxed is punitive, oppressive, and excessive against the Advocates' Remuneration Order and against public policy; and she has not given reasons for the taxation despite the Respondent requesting for the same.



5. The Respondent insists that the instruction fees should have been taxed at Kshs. 75,000/- as the case was not certified as complex in the judgment. Further, if the taxation order is left unreviewed, access to justice by the parties will be impeded.
6. On his part, the Claimant argues that the Respondent has failed to with particularity identify awards on specific items in his Bill of Costs dated 22nd March 2022, that are aggrieving and how. Contrary to the assertion by the Respondent, the Taxing Master provided reasons for the taxation on 6th February 2023. The learned Taxing Master held the view that the Bill of Costs was taxed to scale in accordance with the [Advocates Remuneration Order](#).
7. Counsel for the Claimant concluded that the reference is therefore frivolous, vexatious, an abuse of court process, and lacking in basis. To illustrate this Counsel pointed out that in her reasons, the Taxing Master indicated that she actually taxed the instruction fees at Kshs. 75,000/- in line with the Respondent's submissions on the Bill of Costs.

Analysis and determination

8. I have considered the Chamber Summons dated 2023, the Grounds thereof, the Supporting Affidavit sworn by Charles Arumba on 2nd February 2023, the Replying Affidavit sworn by the Claimant on 20th March 2023 and the parties' submissions.
9. The sole issue for determination is as follows: -
 - a. Whether this Court should grant the orders sought in the Chamber Summons dated 2nd February 2023.

Whether this Court should grant the orders sought in the Chamber Summons dated 2nd February 2023.

10. It is trite that in taxing a Bill of Costs, a Taxing Master exercises discretion. As such, this Court can only interfere with the taxation order where it is demonstrated to the satisfaction of the Court that the Taxing Master erred in principle in the taxation. In this position, I draw support from the case of [Rogan-Kamper v Lord Grosvenor](#) (No 3) [1977] eKLR, where the learned Judge observed as follows:

“As I understand, a judge will not substitute what he considers to be the proper figure for that allowed by the taxing officer unless, in the judge's view, the sum allowed by the taxing officer is outside reasonable limits so as to be manifestly excessive or inadequate.”
11. And in [Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board](#) [2005] eKLR where it was held:

“On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer erred in principle in assessing the costs.”
12. The question upon which the present application turns therefore is whether in rendering her decision on the Claimant's Bill of Costs, the Taxing Master proceeded on the wrong principle of law or whether the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.
13. The Respondent in their Chamber Summons application and Supporting Affidavit claim that they requested reasons for taxation but were not furnished with any. This is not true. I have seen the



reasons for taxation issued by the Taxing Master, Honourable Daisy Mutai, Deputy Registrar on 6th February 2022. She was categorical that she applied the scale contained in Schedule 6A of the Advocates Remuneration Order 2014, as it was the one applicable to matters filed in 2015, like the instant claim. She magnificently explained the taxation on each item and why.

14. I have carefully considered the Respondent's chamber summons application and the affidavit in support thereof and note that it does not challenge the taxation on specific items of the Bill of Costs. It is only in its submissions that it purported to bring onboard a challenge with respect to the amounts awarded under items 2-7, 9,11,12, 14,16, 17, 21-36, 39-44, 46-51, 53-66, 69, 70, 71,74, 775,77, -80, 83-86, 88, 90 -94, 95,96, 98-101, and 103-107. However, the Respondent does not clearly come out on why it thinks the Taxing Master's award on the items should be disturbed. Apparently, the Respondent wants this Court to enter into the realm of speculation, I am not ready to.
15. I have compared the Taxing Master's reasons with the Schedule 6 of the Advocates Remuneration Order 2014 and note that the assessment of instruction fees at Kshs. 75,000/-, where the Claimant was awarded a sum of Kshs. 210,000/- for unfair termination is in accordance with paragraph 1 (b) of Schedule 6.
16. Under Schedule 6 rule 2 of the Advocates Remuneration Order 2014, getting up fees is provided for "In any case in which a denial of liability is filed...". The getting up fee shall be not less than one-third of the instruction fee allowed on taxation. The Taxing Master indeed rightly awarded Kshs. 25,000/- as getting up fees.
17. For drawing of pleadings, she granted Kshs. 1,100/- per four folios in accordance with Schedule 6 Rule 4 (a) of the ARO 2014. For all other drawings, she granted Kshs. 180/- per folio per Schedule 6 Rule 4 (d). Service was assessed at Kshs. 1,400/- per Schedule 6 Rule 9. Drawing of Affidavit of Service was as per Schedule 6 Rule 4 (f) at Kshs. 240/-. In the same vein, I note that all the other items were strictly taxed to scale, there is no need to belabor this point.
18. As a result, I come to the inescapable conclusion that the Applicant hasn't demonstrated that the Taxing Master committed an error of principle in taxing the party and party costs as he did or that the amounts awarded were manifestly excessive. Further, the formula for computing party and party costs or advocate -client bill of costs or party -advocate bill of costs is inbuilt in the Remuneration Order. The Taxing master applied the formula correctly as it related to the matter before her.
19. In the upshot, I find the reference lacking in merit. It is hereby dismissed.

READ, DELIVERED AND SIGNED THIS 28th DAY OF JUNE, 2024.

OCHARO, KEBIRA.

JUDGE

In the presence of:

Mr. Nyabena for the Claimant

Mr. Omwenga for the Respondent

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article



159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

