



Muraguri v Raffla Bags [East Africa] Limited; Diamond Trust Bank Kenya Limited [DTBKL] (Objector) (Cause 435 of 2016) [2023] KEELRC 1197 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 1197 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 435 OF 2016
M MBARÚ, J
APRIL 20, 2023**

BETWEEN

JAMES KINENE MURAGURI CLAIMANT

AND

RAFFLA BAGS [EAST AFRICA] LIMITED RESPONDENT

AND

DIAMOND TRUST BANK KENYA LIMITED [DTBKL] OBJECTOR

RULING

1. The ruling herein relates to two applications, one dated January 16, 2023 filed by the Objector, Diamond Trust Bank Kenya Limited (DTBKL) and the other dated December 16, 2022 filed by the claimant.
2. The application by the claimant dated December 16, 2022 is seeking for orders that;
 - a. The Taxation Order of 14.12.2022 on the claimant's/judgment creditor's bill of costs dated 7.4.2022 is set aside for being based on the wrong principle, and for the court/taxing officer's failure to take into account inter alia, the value of the instruments the basis of the objection; the weighty issues requiring utmost care and extra-ordinary research and industry as well as the novelty of the objection on the instruments of debentures the basis of the objection proceedings.
 - b. Direction to issue to the taxing officer, other than Hon. Mbeja to tax the bill based on the value of the instruments of debenture relied upon by the objector to support the objection to the execution process.
 - c. Costs of this objection be provided for.



3. The claimant has filed this application on the grounds set out in the supporting affidavit of Stephen [AKA Suleiman] Macharia Kimani Advocate who avers that the bill of costs was wrongly taxed when the taxing officer applied the wrong principle and failure to take into account the value of the instruments and the basis of the objection. There were weighty issues that required research and industry as well as the novelty of the objection on the instruments of debenture the basis of the objection proceedings.
4. There is no reply to this application either by the respondent or the objector. None is on record.
5. The objector application dated January 16, 2023 is on the grounds that;
 - a. The decision of the Learned Deputy Registrar delivered on 14 December 2022 on the claimant's Bill of Costs dated April 7, 2022 be set aside.
 - b. The claimant's Bill of Costs dated 7 April 2022 be remitted for fresh taxation before the taxing master and with proper directions thereof.
 - c. Costs of this reference be provided for.
6. The application is supported by the supporting affidavit of Joram Kilwanda the Debt Recovery Officer of the objector and on the grounds that in a ruling dated April 1, 2022 the court dismissed the objector's notice of motion dated June 2, 2021 following which the claimant filed Party & Party Bill of Costs dated April 7, 2022 seeking costs of Ksh. 265,963,576. Parties filed written submissions and in a ruling delivered on December 14, 2022 the taxing officer awarded ksh. 309,464,35
7. The objector is aggrieved on the grounds that the taxing officer applied the provisions of schedule 6(1) instead of schedule 6(13) of the *Advocates Remuneration (Amendment) Order*, 2014 which specifically provides for remuneration in respect to objection proceedings and that the taxing officer erred in awarding instructions fees at Ksh. 128,474.50 instead of Ksh. 14,000 as prescribed under schedule 6(13) (c) of the *Advocates Remuneration Order*.
8. In his affidavit, Mr Kilwanda avers that the taxing officer awarded the claimant items 10, 13b, 20c, 25c, 27b in respect of routine court attendances for filing despite schedule 6(7)(b) allowing for Ksh.500 for such attendances. Items 11a, 16, 19, 20 and 25d were excessively awarded despite the fact of attendance being for less than an hour.
9. He further avers that items 24 of the Bill of Costs for getting up fees is not provided for under schedule 6(2) of the *Advocates Remuneration Order*.
10. The claimant served the objector with documents by email hence did not incur costs under items 10b, 15, 21, 23b and 28a of the Bill of Costs.
11. Given these facts, the taxing officer erred by failing to apply the applicable principles of taxation and hence not justified and the same should be set aside.
12. The claimant in response filed Grounds of Opposition on the reasons that before the objector filed its objections there was no notice to the taxing officer and due to the fact that the claimant had already filed its objections on the Bill of Costs through application dated December 16, 2022 and if the application by the objector is allowed the claimant will suffer loss and damage, therefore the objector application should be dismissed with costs.
13. The claimant submitted that the instruments of debenture were fraudulent and solely made to siphon money from the objector bank and the claimant unravelled the same following research and evidence and for these reasons the instructions fees should be accordingly reassessed. When the court allowed



- open court hearing in the objection proceedings, the matter ceased being governed by Schedule 6(13) which provides for costs on taking of proceedings to establish or oppose an objection. Where *viva voce* evidence by the court in open court, the circumstances change as required under section 34 of the [Civil Procedure Act](#), the witnesses called by either side must be prepared for the hearing.
14. The claimant submitted that the objector's application seeking to apply schedule 6(13) instead of schedule 6(1) has no basis and the awarded instructions fees proposed at Ksh. 14,000 is based on an erroneous assumption that the taxing officer was unaware of schedule 6(13) of the [Advocates Remuneration Order](#) as held in *Thomas James Arthur v Nyeri Electricity Undertaking* [1961] EA and the application by the claimant should be allowed and the application by the objector be dismissed.
 15. The objector submitted that the reference on the Bill of Costs and the taxation as filed within time and there is no mandatory requirement to first write to the taxing officer as held in [Ahmed Abdikadir & Co. Advocates v National Bank of Kenya Limited \(2\)](#) [2006] eKLR. where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons and in this case, in the ruling of the taxing officer delivered on December 14, 2022 there were reasons given for the taxation but the objector is aggrieved by the taxing officer relying on the provisions of schedule 6(1) instead of schedule 6(13) of the [Advocates Remuneration Order](#) which objections led to the taxation of the bill of costs herein. The schedule has addressed the matters to be considered by the taxing officer in terms of preparing for objection, instructions with attachment and instructions to oppose objections and in this regard, the claimant is not entitled to the award of ksh. 128,474.50 but Ksh. 14,000 as provided under schedule 6(13) (c) of the [Advocates Remuneration Order](#).
 16. With a proper application of the correct schedule, that is schedule 6(13) the taxed items should be allocated accordingly and for these reasons, the ruling dated 14th December, 2022 and the bill of costs of 7th April, 2022 should be taxed afresh.

Determination

17. The two applications before court dated December 16, 2022 and January 16, 2023 followed the taxing officer ruling dated December 14, 2022 after the claimant filing the Bill of Costs dated April 7, 2022. The subject Bill of Costs related to the claimant and the objector proceedings after judgment herein was entered for the claimant against the respondent.
18. Following objection proceedings, the claimant was allowed costs.
19. These then became purely objection proceedings and costs due to the claimant therefrom were governed under schedule 6(13) of the [Advocates Remuneration Order](#) and not under Schedule 6(1) as held in *National Bank of Kenya v Rachuonyo & Rachuonyo Advocates* [2021] eKLR. The rationale is that objection proceedings are different from proceedings against a respondent and the purpose of schedule 6(13) of the [Advocates Remuneration Order](#) is to address such difference.
20. The Bill of Costs filed by the claimant was that of Party and Party Bill of costs on the objection proceedings commenced by a notice of objections to Attachment and Motion dated 2.6.2021 and filed on 3.6.2021 and from such matter, the correct schedule of application is that of Schedule 6(13) and not schedule 6(1) of the [Advocates Remuneration Order](#).
21. In the subject ruling dated December 14, 2022 the taxing officer has given reasons for the allocation of the items awarded save the correct schedule ought and should have been applied, that is, schedule 6(13) of the [Advocates Remuneration Order](#). In the case of [Sophie Chirchir v Africa Merchant Assurance Co. Ltd](#) [2022] eKLR the court in addressing a similar matter as herein held that;



22. 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. ...
23. The contention by the claimant that the ruling of the court dated December 14, 2022 is based on the wrong principle is to that extent correct. The correct Schedule of application was that of schedule 6(13) of the *Advocates Remuneration Order* but to urge the court that the value of the instruments of debenture ought to have been put into account in objection proceedings is not one such principle of consideration once the taxing officer gave reasons as to the allocation of the instructions fees, save under the wrong schedule. Application by the claimant in this regard is found without justification.
24. Under Schedule VI (13) of the *Advocates Remuneration Order*, 2014 the provisions on instructions fees are that;
 13. Objection to execution proceedings
 - (a) Instruction to prepare objection Kshs 10,000
 - (b) Instruction to proceed with attachment Kshs 2,100
 - (c) Instruction to take proceedings to establish or oppose such proceedings Kshs 14,000
25. Court attendances for filing are allowed and regulated under schedule 6(7) and to be charged at Ksh.500 under items 10, 13b, 20c, 25c and 27b.
26. Court attendances items 11a, 16, 19, 20 and 25b have not been set in time save such attendances under schedule 6(7)(d) take fairly half day and an allocation of Ksh. 7,100 is reasonable in this case.
27. Taking the above into account, the objector application is justified to the extent that the taxing officer shall apply schedule 6(13) of the *Advocates Remuneration Order* following objector proceedings and the nature of the Bill of Costs the same shall be taxed afresh.
28. Accordingly, ruling delivered on December 14, 2022 on the claimant’s Bill of Costs dated April 7, 2022 is hereby set aside; the taxing officer shall tax the Bill of Costs afresh under the correct Schedule, Schedule 6(13) of the *Advocates Remuneration Order* (vi) (13) and each item addressed accordingly.
29. In these applications, each party shall bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 20TH DAY OF APRIL, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... **and**

