



Safepak Limited v KTK Advocates (Miscellaneous Application 60 of 2019) [2023] KEELRC 2636 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2636 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 60 OF 2019**

**L NDOLO, J
OCTOBER 26, 2023**

BETWEEN

SAFEPAK LIMITED CLIENT

AND

KTK ADVOCATES ADVOCATE

RULING

1. Pursuant to a ruling dated March 14, 2023, by which the Taxing Master, taxed the Advocate/Client Bill of costs at Kshs. 403,520, the Client filed a reference which is the subject of this ruling.
2. The reference is brought by way of Chamber Summons dated May 10, 2023 seeking the following:
 - a. A finding that the taxing master erred in principle and in law in his assessment of instruction fees and in awarding a sum that is too excessive considering the nature of the brief that was being handled;
 - b. A finding that the taxing master erred in principle and in law by increasing the taxed costs by half;
 - c. That the court exercises its discretion and proceed to reduce the instructions fees and also disallow the half increment that was loaded on the taxed costs;
 - d. A finding that the taxing master erred in principle and in law by applying both schedule V and VI in assessing the bill of costs.
3. The application is supported by an affidavit sworn by the client/applicant’s sales and administration manager, Catherine Wangari and is based on the foregoing grounds:
 - a. That the respondent filed an Advocate/Client Bill of Costs dated May 13, 2019 which was taxed on March 14, 2023 at the sum of Kshs. 403,520;



- b. That the taxing master erred in law and principle in awarding a sum that is too excessive as instruction fees and also by increasing the taxed amount by half;
 - c. That schedule V of the *Advocates (Remuneration) Order* does not provide for increment of fees by half and to that extent the Taxing Master erred in law and principle;
 - d. That the foregoing errors of law and principle necessitate this reference;
 - e. That it is therefore just that the orders sought in this application be granted.
4. In her affidavit in support of the application, Catherine Wangari took issue with the sum of Kshs. 200,000 allowed by the Taxing Master as instruction fees. She states that the Advocate only responded to demand letters by some employees whose services had been terminated.
 5. Wangari also took issue with the decision by the Taxing Master to increase the fees by half.
 6. The advocate/respondent opposes the application by way of a replying affidavit sworn by Donald Kipkorir, Advocate on May 19, 2023.
 7. Counsel depones that the chamber summons is defective on account of failure to comply with the timelines set by rule 11 of the *Advocates (Remuneration) Order*.
 8. He adds that the reference does not demonstrate that the sum of Kshs. 403,502 is excessive in the circumstances.
 9. Although in the affidavit opposing the reference, the issue of timelines was raised, in the oral submissions before the Court, Counsel for the parties agreed that the reference was in fact filed within time. I will therefore not spend time on this issue.
 10. The substantive issue raised in the reference is the level of instruction fees allowed by the Taxing Master, which the Applicant terms as excessive.
 11. In his ruling dated 14th March 2023, the taxing master states as follows:

“The Applicant has charged Ksh 1,200,000 under this item for instruction to act for the client/respondent in a matter wherein Norah Mutisya Kavindu and Julia Nyaga were claiming unfair termination of employment and were seeking compensation in the sum of Ksh 3,889,128 and Ksh 6,451,155 respectively. Norah Kavindu Mutisya had also alleged to have been assaulted by the Managing Director of the client/respondent.

To justify the claimed amount, the applicant invited the court to consider the care and labour exercised, the number and length of papers perused, the nature and importance of matter, the amount involved, the interest of the parties and the complexity of the matter.

They relied on schedule 5 Part II of the *Advocates Remuneration Order, 2014...*”
 12. The taxing master relied on the decisions in *Joreth Limited v Kigano & Associates* [2002] eKLR and *Geoffrey Makana Asanyo v Nakuru Water & Sanitation Services Company Limited & 8 others* [2015] eKLR where it was held that in assessing instruction fees, the taxing master is obligated to consider the nature and importance of the matter, complexity of the issues raised, their difficulty or novelty, time expended by counsel and value of the subject matter.



13. Having considered the rival positions presented by the parties, the taxing master reached following conclusion:

“I note that the advocate/applicant was instructed to reply to the demand letters and no case was filed. I will equate the reply of a demand letter to opinion where the basic instruction fees for formal written opinion shall be as reasonable but not less than Ksh 35,000. I have also perused the bundle of documents in support of the bill and note that the applicant had issued a fee note dated March 20, 2019 whereby they demanded the total fees of Ksh 470,846.84”

14. According to *Black’s Law Dictionary* (Tenth Edition), a legal opinion is a written interpretative statement that applies to a specific factual situation. This Court is unable to understand the basis upon which the Taxing Master equated the response to the demand letters to a formal written opinion.

15. As held by J.B Ojwang J (as he then was), in *Republic v Ministry of Agriculture & 2 others Ex Parte Samwel Muchiri W. Njuguna & 6 others* [2006] eKLR the aim of taxation of instructions fees payable to an Advocate is to achieve reasonable compensation for professional work done without the prospect of unjust enrichment to any of the parties.

16. In my most respectful view, the taxing master fell into error in equating a response to demand letters to a legal opinion, as the two outcomes did not require the same level of intellectual effort and industry.

17. The other grievance raised by the applicant has to do with the decision by the taxing master to increase the costs by half. In its written submissions, the applicant cited the decision in *Sophie Chirchir v Africa Merchant Assurance Co Ltd* [2022] eKLR where Odunga J (as he then was) held that a decision to increase or reduce basic fees ought to be justified.

18. In his ruling, the taxing master did not offer any explanation as to why he increased the taxed costs by half.

19. In light of the foregoing, I find that there is a legitimate reason to justify interference with the taxation rendered by the taxing master.

20. The subject taxation is therefore set aside and the matter is remitted for re-taxation before another taxing master, other than Hon Fredrick M. Nyamora.

21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF OCTOBER 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Kiplagat for the Client/Applicant

Ms. Anyango h/b Mr. Kipkorir for the Advocate/Respondent

