



**Ndubi v Nyangarama & 6 others; Momanyi & 3 others (Interested Parties)  
(Petition 12 of 2020) [2022] KEELRC 12959 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12959 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION 12 OF 2020  
CN BAARI, J  
OCTOBER 27, 2022**

**BETWEEN**

**GEOFFREY AGWERA NDUBI ..... PETITIONER**

**AND**

**HON. JOHN OBIERO NYANGARAMA ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY ASSEMBLY OF NYAMIRA ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF NYAMIRA ..... 3<sup>RD</sup> RESPONDENT**

**MR. SHEM N. KIAGE ..... 4<sup>TH</sup> RESPONDENT**

**DR. STELLA MORAA ..... 5<sup>TH</sup> RESPONDENT**

**MS. STELLA NYAMORAMBO ..... 6<sup>TH</sup> RESPONDENT**

**DR. SAMSON BARONGO ..... 7<sup>TH</sup> RESPONDENT**

**AND**

**GLADYS BOGONKO MOMANYI ..... INTERESTED PARTY**

**PERIS NYABOKE OROKO ..... INTERESTED PARTY**

**JOHNSTONE OBIKE NDEGE ..... INTERESTED PARTY**

**SAMUEL MOKUA MAIKU ..... INTERESTED PARTY**

**RULING**

1. The ruling herein relates to the Applicant's Chamber Summons application dated June 3, 2022, and brought pursuant to Rule 11 (2) & 13 of the [Advocates Remuneration Rules](#), Section 1A, 1B and 3A of the [Civil Procedure Act](#), and Order 51 Rule 1 of the [Civil Procedure Rules](#). The Applicant seeks orders THAT: -



- i. Spent
  - ii. The decision of the Taxing officer delivered on May 19, 2022, on the Petitioner's Bill of costs dated February 16, 2021, the quantum awarded thereon and the reasoning with respect to the said orders be set aside.
  - iii. The Honourable Court be pleased to re-tax the Bill of Cost dated February 16, 2021.
  - iv. In the alternative to prayer 3, the Honourable Court be pleased to remit the Bill for re-taxation before a different taxing officer with appropriate directions therefore.
  - v. Costs be in the cause
2. The application is supported by grounds on the face thereof and an affidavit sworn by James Aggrey Mwamu, Counsel for the Applicant.
  3. The basis of the application is that the bill as taxed is manifestly low as compared to the award given by the Honourable Justice N. Nderi in his Judgment delivered on October 15, 2020.
  4. The Applicant further argues that the Taxing Officer departed from the law in taxing the Petitioner's bill of cost going by the amount taxed.
  5. The Respondents and the Interested Parties did not oppose the application.
  6. The application was canvassed through written submissions and only the Applicant filed submissions and which have been duly considered.

#### **Determination**

7. I have considered the application, the grounds and submissions in support. The issue for determination is whether the court should vacate the Taxing officer's order of May 19, 2022, taxing the Petitioner's Bill of cost at Kshs. 1, 498, 733/-
8. The Petitioner's sole basis for seeking to set aside the taxation order, is that the quantum is manifestly low compared to the award granted in the judgment subject of the bill of costs. In *First American Bank of Kenya vs. Shah and Others* [2002] E.A.C.A 64 it was held that a court has no mandate to interfere with a Taxing Master's decision on taxation, unless it is shown that either the decision was based on an error of principle or the amount awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.
9. Further, in *Joreth Ltd vs. Kigano & Associates* [2002] 1 E.A 92 the court held that a Taxing Master in assessing costs to be paid to an advocate on a bill of costs, exercises judicial discretion and that such judicial discretion can only be interfered with where there is demonstration that the discretion was exercised capriciously, and or in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the Taxing Master is excessive as to amount to an error in principle.
10. I have had occasion to peruse the Taxing Officer's ruling and her reason for taxation, which I am now invited to set aside. The court record indicates the first issue that the taxing officer considered is the item on instruction fees, where the Petitioner sought instruction fees of Kshs. 45,000,000.00 on account of complexity of the petition subject of the bill of costs.
11. The Taxation officer in her ruling now impugned, appraised herself on the principles that guided her in the assessment of instruction fees, where she called to her aid the case of *Republic v Ministry of Agriculture Ex Parte Samuel Muchiri w'Njuguna & 6 others* (2006) eKLR, where she opined inter alia; -



- i. The proceedings subject of the taxation were purely public-law proceedings;
  - ii. the taxation of advocates' instruction fees is to seek no more and no less than reasonable compensation for professional work done;
  - iii. the taxation of advocates instructions fees should avoid any prospect of unjust enrichment, for any particular party or parties.....”
12. The Petitioner's only ground for this objection to the taxation order, is that it is too low compared to what the court granted in the judgment. The Petitioner has not supported his assertion on the complexity of the suit as to deserve more in instructions fees than was awarded by the taxing officer.
  13. The suit subject of the taxation was lodged on April 21, 2020, and the judgment rendered on October 15, 2020, about 6 months later. I further note that the award in the judgment subject of the taxation, was not monetary.
  14. I find nothing complex on the issues raised in the petition as alleged by the Petitioner.
  15. Considering the totality of the assessment and the reasons thereof, it is my opinion that the nature of the litigation giving rise to this appeal was not one that would have attracted the sum of Kshs. 45,000,000.00 in instructions fees. In my view, the Kshs. 1,000,000.00 awarded by the taxation officer is a fair award as assessed instruction fees.
  16. In conclusion, I find the application to lack merit and is hereby dismissed.
  17. The Taxing officer's assessment is upheld.

Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 27TH DAY OF OCTOBER, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Ms. Ogollah h/b for Ms. Nyangwana for the Applicant/Petitioner

N/A for the Respondents

N/A for the Interested Parties

Ms. Christine Omollo-C/A

