



V Chokaa & Co Advocates v County Government of Mombasa (Environment & Land Miscellaneous Case E077 of 2022) [2024] KEELC 7136 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7136 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE E077 OF 2022
NA MATHEKA, J
OCTOBER 31, 2024**

BETWEEN

V CHOKAA & CO ADVOCATES APPLICANT

AND

COUNTY GOVERNMENT OF MOMBASA RESPONDENT

RULING

1. The application is dated 15th June 2024 and is brought under section 51 (2) of the *Advocates Act* Cap. 16 Laws of Kenya, Rule 7 of the Advocates Remuneration Order, Order 36 Rule (l) (a) of The Civil Procedure Rules and Section 3(a) of the *Civil Procedure Act* seeking the following orders;
 1. That Judgment be entered for the Applicant as against the Respondent in the sum of Kshs.117, 568.35/= in accordance with the Certificate of Taxation.
 2. That The Defendant /Respondent to pay the Applicant the said Sum together with Interests Therein at 14% per annum with effect from 10th November 2022 until payment in full.
2. It is made on the grounds that the Cost of this Application be paid for by the Defendant/Respondent. The sum of Kshs.117, 568.35 is the amount taxed costs for Professional work done by the Applicant for the Respondent. The said taxed costs neither been set aside nor altered by this Court. Under section 51 (2) or the *Advocates Act*, the Applicant as an Advocate has the Right to have the Judgement entered in his favor for the costs even without filing the suit for recovery. This suit for is recovery of the taxed costs. The Defendant has no defence to the claim by the Plaintiff for his taxed costs.



3. This court has considered the application and the supporting affidavit therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:

- (1) "Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the 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."

4. Be that as it may, the principles of varying or setting aside a Taxing Master's decision are set out in the cases of *First American Bank of Kenya vs Shah and Others* (2002) EA 64 and *Joreth Ltd vs Kigano and Associates* (2002) 1 EA 92, that the Taxing Master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law. In *First American Bank of Kenya vs Shah and Others* (2002) E.A.L.R. 64 the court held that;

First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle".

5. These principles reiterate the position of the Court of Appeal in *Joreth Ltd vs Kigano & Associates* (2002) eKLR, where the said Court held that a Taxing Master in assessing costs to be paid to an advocate in a bill of costs was exercising her judicial discretion and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously, and in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the Taxing Master is excessive to amount to an error in principle.

6. In the instant case the respondent has not raised any objection and the application is not opposed. I find this application is merited and is granted as prayed with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 31ST DAY OF OCTOBER 2024.

N.A. MATHEKA

JUDGE

