



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.973 OF 2017

CAROLINE WANJIRU MWAL.....CLAIMANT

VERSUS

LABONTE LIMITED.....1ST RESPONDENT

NATHAN MULURE AMAKOBE.....2ND RESPONDENT

RULING

The advocate for the respondent's, Maina Makome & Company Advocates filed application dated 14th July, 2021 under the provisions of paragraph 11(2) of the Advocates Remuneration Order and seeking for orders that the ruling of the Taxing Officer dated 2nd July, 2021 whereby the Bill of costs dated 8th May, 2020 was taxed at Ksh.135, 904.60 be reviewed and remitted back for re-taxation before any other taxing officer and the costs of this reference be paid.

The application is premised on the grounds that the taxing officer erred in principle and in law in taxing the bill at Ksh.135, 904.60 whereas the principle sum was only Ksh.162, 000 and hence the schedule that should have been applied was schedule VII by virtue of the provisions of Rule 68 of the Advocates Remuneration Rules. The taxing officer erred in principle in taxing the bill based on schedule VI instead of VII of the Advocates Remuneration Order and in the interests of justice the ruling of 2nd July, 2021 should be set aside and the bill dated 8th May, 2020 be remitted back for taxation.

In his Supporting affidavit, Nathan Mulure Amakobe the 2nd respondent avers that he is a director of the 1st respondent in support of the application is seeking to have the ruling with regard to the taxation of the bill of costs be re-taxed as items 1 to 69 of the bill the items allowed in schedule VII and even where provided for are far less than what is provided in the bill. Such contravenes the Advocates Remuneration Order and should be set aside.

In response, the claimant filed Grounds of Opposition that the reference by the applicant is incurably defective and should be dismissed with costs.

The applicant submitted that the application is founded on Rule 68 of the Advocates Remuneration Order which requires that the scales applicable with regard to amount received or paid in settlement or awarded to subordinate courts only shall be allowed unless the Judge otherwise orders. Given the amount awarded at Ksh.162, 000, the schedule to apply is VII which is not the case here.

The claimant submitted that under Rule 11(1) OF THE Advocates Remuneration Order, a party who is aggrieved by the decision of the taxing officer must first write an objection with regard to the subject decision within 14 days of the said decision and ask for reasons. Upon receipt of the same, then an applicant may proceed to file a reference to the court.

In this case the taxing officer's ruling was on 2nd July, 202 and no objection was made save to file the instant application on 14th July, 2021. The reference is filed without the due process and should be dismissed with costs.

The application herein is based on the provisions of Rule 11(2) of the Advocates Remuneration Order and on the grounds that the taxing officer should have used schedule VII by virtue of Rule 68 of the Advocates Remuneration Rule but instead schedule VI was applied which led to an erroneous amount and the bill should be re-taxed.

Under Rule 11(1) of the Advocates Remuneration Order, a party aggrieved by the decision of the taxing officer is required to within 14 days after the decision file an objection.

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

Once the taxing officer has made the decision, on the objection and reasons thereof, the objector may within 14 days of those reasons apply for the setting aside of the decision.

The applicant has applied under Rule 11 (2) and not sub rule (1).

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.

The applicant has since challenged the ruling and reasoning thereof and application of Schedule VII of the Advocates Remuneration Order vide this application. Such procedure is contemplated under Rule 11(2) of the Remuneration Order.

The court will not 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. See **First American Bank of Kenya v Shah & Others (2002) 1 E.A.** and in **Haider bin Mohamed el Mandry & 4 Others v Khadija Binti Ali Bin Salem alias Bimkubwa (1956) 23** the court held that, where the instruction fee was taxed at a level so grossly excessive as to betoken the application of wrong principles, it is an occasion for a Judge to intervene.

I have gone through the pleadings, the award of the court at Ksh.162,000 and the taxed costs Ksh.135,904.60 is manifestly excessive to justify the court to intervene and direct that the Bill of Costs dated 8th May, 2020 should be taxed under the appropriate Schedule to the Advocates Remuneration Order and to apply Schedule VII is in error.

Accordingly, application dated 14th July, 2021 is found with merit and is allowed. The Bill of Costs dated 8th May, 2020 shall be re-taxed. Each party shall bear own costs.

Delivered in court at Nairobi this 26th day of November, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi