



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

SUIT NO. 105 OF 2016

PATRICK NJUGUNA KAMAU & 24 OTHERS.....CLAIMANTS

VERSUS

WILHAM (K) LIMITED.....RESPONDENT

RULING

1. The decision of the Learned Taxing Master in the taxation ensuing from the suit is challenged through the chamber summons dated 29<sup>th</sup> November 2017 and filed on 30<sup>th</sup> November 2017. The summons seek to have the taxing officer's determination of 16<sup>th</sup> November 2017 set aside in relation to items 1 and 2 on the Claimants' bill of costs dated 23<sup>rd</sup> August 2017. The main ground for the application is that the taxing master did not award instruction fees to each Claimant as each Claimant had a distinct claim independent of each other. The amounts claimed by the Claimants under instruction fees was 75,000/- per Claimant making a total of Kshs. 2,100,000/- and the getting up fees were  $\frac{1}{3}$  of the instruction fee which is Kshs. 700,000/-. The Taxing Master awarded Kshs. 120,564/- as instruction fees and Kshs. 40,188/- as getting up fees prompting this reference.

2. The Respondent filed grounds of opposition and in the grounds asserts that the application is time barred and was brought after an inordinate delay between the time the Ruling of the taxation was given and the filing of the reference. The Respondent states that the application is prematurely before the court for the reason that the Applicant has failed to comply with the provisions of Paragraph 11(1) & (2) of the Advocates Remuneration Order 2009. Finally, it was the Respondent's position that the taxing master has discretion to award reasonable fees as deemed fit and the discretion can only be interfered with where there is an error in principle.

3. At the hearing of the application on the reference, it was submitted for the applicant that the aim was to reverse the Taxing Officer's determination of 16<sup>th</sup> November 2017 specifically on items 1 and 2 of the Claimants' bill of costs dated 23<sup>rd</sup> August 2017. The Claimants sought the award of the items 1 & 2 of the bill of costs be awarded as drawn as there was an error by taxing officer in that there were 25 Claimants and the taxing officer went ahead and award singularly as if the Claimant was solo. The Claimants relied on the case of **Nguruman Ltd v Kenya Civil Aviation Authority & 3 Others [2014] eKLR** where the Judges of Appeal held that an advocate is entitled to instruction fees if employed by two or more defendants to separate costs in the same cause. It was submitted further that the case of **Meyers & Others v Hamilton [1975] EA 16** buttresses this position as does the case of **Desai, Sarvia & Pallan Advocates v Tausi Assurance Co. Ltd [2017] eKLR**. The Claimants thus assert that they are entitled to instruction fees singularly and not collectively.

4. The Respondent is opposed and submits that the application failed to comply with the law. The Respondent was of the view that notice must be given and cited Para 11(1) and (2) of the Advocates Remuneration Order 2009. The failure to issue such notice denies the taxing officer the opportunity to respond to the reasons as to why some items were left out and others taxed. The rationale being to enable the taxing officer to make a report to the court. The Respondent relied on the case of **Nyangito Co. Advocates v Ndoinyo Lessos Creameries Ltd [2014] eKLR** for the proposition that the taxing officers decision cannot be interfered with unless it can be shown to have been on a principle error. The court is to remit the matter back to the taxing officer for re-assessment. Reliance was placed on the case of

**Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund [2005] eKLR** where the court reiterated that it cannot interfere with the decision of the taxing master unless there is a principle error in assessing costs. It was submitted that there is no principle error in assessing the costs but only a disagreement with the decision of the taxing officer and that it was thus improper to move the court without giving the taxing officer notice to enable her give reasons.

5. In matters such as the one before the court, it is clear that notice must be served and that the Taxing Officer's decision cannot be flippantly interfered with. In the case before me, there is no proof that notice was served on the Deputy Registrar, the Taxing Officer, in the taxation giving rise to this reference. In my view, that would have been sufficient to dispose of the matter but in the event that view is incorrect, the authorities and the law are at convergence. Under the Advocates (Remuneration) Order, Paragraph 11(1) and (2) provide as follows:-

*(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.*

*(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 date of receipt of the reasons apply to a judge by chamber summons, which shall be served on all parties concerned, setting out the grounds of his objection.*

6. The law makes it clear that a notice should issue to the taxing officer upon which the taxing officer will give reasons for the decision on the items. In the matter before the court, what can only be seen is the notice but no reasons for the decision by the taxing officer have followed the notice. The chamber summons therefore is prematurely before me as the learned Taxing Officer is yet to give reasons. Instead of striking out the chamber summons as I could, I will refer the matter to the Taxing Officer who will pen the reasons for the taxation within 14 days of the date of this Ruling and thereafter the file will be placed before me for the final ruling on the reference within 14 days of receipt of her reasons.

It is so ordered.

**Dated and delivered at Nyeri this 15<sup>th</sup> day of February 2018**

**Nzioki wa Makau**

**JUDGE**