



**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 Kshs. 75,000/- per Claimant making a total of Kshs. 2,100,000/- and the getting up fees were 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 officer's 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.

5. In the taxation before the Taxing master, the Claimants sought instruction fees for each of them as they were 25 in total. They argue that the decision of the taxing master was erroneous as the sum taxed as instruction fees is contrary to the provisions of the Advocates Remuneration Order where the parties are more than one. In the case of **Desai, Sarvia & Pallan Advocates v Tausi Assurance Co. Ltd** the Court of Appeal (Visram, Karanja and Koome JJ.A) held that the instruction fees can only be claimed for the one set of pleadings filed. The learned Judges of Appeal while referencing Rule 62 of the Advocates (Remuneration) Order which states that

*Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other pleadings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate's bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed* held:

*It is clear that the rule applies where an advocate is engaged or instructed by two or more clients and files separate pleadings for each client.* (underline mine)

6. It is crystal clear that the Rule would be invoked where the pleadings filed are **separate** and not where a unitary claim is filed such as in this case. I am persuaded the reasoning of the taxing master in disallowing the sums sought as instruction fees and therefore her decision was not erroneous or misguided. I overrule the objection and dismiss the reference with costs.

It is so ordered.

**Dated and delivered at Nyeri this 11<sup>th</sup> day of April 2018**

**NZIOKI wa MAKAU**

**JUDGE**