



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

MISCELLANEOUS APPLICATION NO. 9, 10, 12 & 13 OF 2017

WARUTERE & ASSOCIATES ADVOCATES.....APPLICANT

VERSUS

1. **ROBERT KANGETHE BAAR**
2. **GEORGE GATHANG'A MWANGI**
3. **BONIFACE MBAARU MWANGI**
4. **JOHNSON KIONGO NJOGU.....RESPONDENTS**

RULING

1. Through the reference on taxation the Applicant seeks that the Taxing Master's order dated 9th February 2018 be set aside and the bills taxed afresh on grounds that the Applicant's bill of costs dated 18th December 2017 and filed on 19th December 2017 was not taxed in accordance with the Advocates Remuneration (Amendment) Order, 2014 schedule 6 especially paragraph 1 (b) in particular respecting item 1 of the bill of costs. The Applicant asserts that the advocate/client bill of costs as taxed was excessively low and that there was an error of principle in taxing the bill of costs aforesaid. The chamber summons application was supported by the affidavit of Davidson Warutere Iregi Advocate which was to the tenor and effect that the Taxing Master failed to follow the provisions of the law in taxing item 1 being instruction fees separately as the matters were proceeding separately before consolidation. It was deponed that the Learned Taxing Master erred in paragraph 4 of her Ruling erroneously holding that as the instruction fee would be apportioned among 11 files the instruction fees under item 1 is taxed at Kshs 15,909/- and the balance to be taxed off.

2. The Applicant urged the applications on 24th April 2018 and stated that they were on instruction fees. He argued that the Deputy Registrar was of the view that the suits were consolidated and the instruction fees should be apportioned. He submitted that the cases proceeded separately prior to the consolidation and the apportionment should thus be after consolidation that the instruction fees were therefore Kshs. 75,000/-. It was argued that the taxation of instruction fees at Kshs. 15,909/- was an error on principle and the award on instruction fees grossly low and the Applicant thus urged the court to interfere with the Ruling of the Taxing Master as it was wrong in law and principle.

3. The reference sought redress on item 1 of the advocate/client bills of costs filed in the series of matters being Misc. Application Nos. 9, 10, 11, 12 and 13. In these matters, the argument advanced was that the item on instruction fees was wrongly taxed as the suits were consolidated later having initially proceeded separately. The Applicant argued that the fees in the 11 matters were to be apportioned after the consolidation and not prior to consolidation and therefore the matter of instruction fees was to be separate prior to the consolidation aforesaid. The case of **Grace Wangui Ngenye v Wilfred Kaboro & Another [2013] eKLR** was cited by the Taxing Officer in her Ruling of 9th February 2018 which ruling provoked this instant reference. The case of **Wambugu, Motende & Co. Advocates v Attorney General [2013] eKLR** where the court handling the reference cited with approval the case of **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Others EALR (1972) EA 162** on the principles of taxation where the Court of Appeal held as follows:

- (a) *That costs should not be allowed to rise to a level as to confine access to justice as to the wealthy,*
- (b) *that a successful litigant ought to be fairly reimbursed for the cost he has had to incur,*
- (c) *that the general level of remuneration of Advocates must be such as to attract recruits to the profession and*
- (d) *so far as practicable there should be consistency in the award made and*

(e) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.

4. The Respondents were the clients of the Applicant and the relief sought was exactly the same as itemised in item 1 of the Bill of Costs. The principles in the case were that litigation should not be the preserve of the wealthy and costs awarded or taxed should therefore not be such as to lead to a situation where parties are unable to approach courts for redress. On the other hand, the court recognised the need to encourage upcoming lawyers by holding that costs should not be so restricted as to discourage upcoming advocates. In balancing these two interests, there is no doubt in my mind that when the Taxing Master upheld the decision in **Grace Wangui Ngenye v Wilfred Kiboro & Another** (supra) was meant to avoid a situation where an advocate benefits twice at the expense of the client with respect to the party and party bill of costs and the advocate-client bill of costs. Advocates should avoid filing multiple suits where the cause of action is joint and the relief is generally the same and only consolidate them for hearing so as to obtain separate instruction fees on taxation. This is a practice that should be deprecated as it enhances the possibility of making access to justice expensive and a preserve of the rich. I decline the invitation to interfere with the Taxing Officer's decision to apportion instruction fees as she did holding that the costs of consolidated suits should be apportioned and the awarding of instruction fees for each individual suit would amount to unjust enrichment. I concur with her reasoning and uphold it as a sound exposition and application of the law on costs in consolidated suits. I dismiss the reference with no orders as to costs as the Respondents did not participate.

It is so ordered.

Dated and delivered at Nyeri this 28th day of May 2018

Nzioki wa Makau

JUDGE