



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

MISCELLANEOUS APPLICATION NO. 3 & 4 OF 2017

CHARLES MUCHEMI KARWERU

t/a KARWERU & CO. ADVOCATES.....APPLICANT

VERSUS

1. STEPHEN GACHUGI MUTHOGA

2. MICHAEL MUCHOKI MWANGI.....RESPONDENT

RULING

1. The Applicant seeks through the reference on taxation for a variation of the Taxing Master's decision on the advocate-client bill of costs. The Applicant prayed through the chamber summons dated 23rd October 2017 that by way of reference to the honourable judge, the court be pleased to set aside the taxing officer's Ruling of 6th October 2017 on the advocate's-client bill of costs dated 5th April 2017. The grounds for the motion were on the face of it, to wit, that the taxing officer's ruling on the bill of costs is fundamentally flawed on matters of principal (sic), law and fact and ought to be set aside, and that the taxing officer did not tax bill at all. In her Ruling of 6th October 2017, the Taxing Master awarded the Applicant the taxed party and party costs plus 50% to arrive at the advocate-client fees. The Applicant argued that the items in the advocate-client bill of costs were chargeable as found by the Taxing Master and that the Taxing Master therefore misdirected herself in declining to tax the bill as drawn and allow the items charged. The Applicant asserts that it was unclear what the Taxing Master referred to when she stated that there should be an election under paragraph 22 of the Advocates Remuneration Order. It was argued that there was no mention of which itemized billing was supposed to have been charged only upon election. The Applicant submitted that the taxable amount plus VAT would be by simple arithmetic more than what was awarded by the learned Taxing Master. Reliance was placed on the decision of **Wambugu, Motended & Co. Advocates v Attorney General [2013] eKLR** where the court cited the case of **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Others EALR (1972) EA 162** on the principles of taxation. The Applicant sought that the taxation be set aside for being erroneous in principle.

2. The Respondents each filed a Replying Affidavit in response to the reference and stated that they would abide the court's ruling and not file any submissions. In their replying affidavits, the deponents are of the view that the decretal sum was paid in full inclusive of the party and party costs which the applicant accepted in satisfaction of his fees. The deponents were of the view that the advocate was barred from seeking costs for the same matter twice.

3. In this reference on taxation, the Applicant asserts that the Taxing Master did not tax the bill at all and that her determination on the advocate-client bill of costs dated 5th April 2017 was erroneous in principle, law and fact and ought to be set aside. The Applicant had rendered professional services to the Respondents culminating in the bill of costs drawn by the Applicant. I have perused at the 2 bills of costs on the file and I have seen the notes the Taxing Master made on the bills. In the first 11 items in respect of Misc. Application 4 of 2017, she noted that no dates were given for when the particulars in the third column were purportedly done. Items 13-21 similarly had no dates. She taxed off amounts on various items on the bill and noted that there was no election under Schedule V on items 39 and 71. She taxed the bills as per her Ruling of 6th October 2017. In her ruling, she clearly sets out the rival arguments on the bill and proceeded to tax the bill at instruction fees in part A plus 50% of fees prescribed in part A plus 16% VAT on that portion of the fees making the total payable on the bill as Kshs. 218,063.70. The Applicant had sought Kshs. 571,631.76 on the bill of costs.

4. In the case of **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another** (supra) 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.

5. The Respondents were the clients of the Applicant and these principles should of necessity apply to the two cases. They were successful against the Respondent in their suit against the Othaya-Mukuruwe-ini Water Services in **Michael Muchoki Mwangi & Stephen Gichugi Muthoga v Othaya-Mukuruwe-ini Water Services Company Limited [2015] eKLR**. The Applicant successfully sought party and party costs as well as the costs subject of this reference.

6. The court in the Premchand case above enunciated principles that abide to date. Litigation should not be the preserve of the wealthy and costs 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 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 held that the provision of part A of the Advocates Remuneration Order where advocates are entitled to party and party fees plus 50% as advocate-client costs, are meant to avoid a situation where an advocate benefits twice at the expense of the client with respect to a party and party bill of costs and the advocate-client bill of costs as the items in both are essentially the same. I uphold that reasoning and reject the invitation to interfere with her Ruling on taxation. The two Respondents are therefore not required to pay more than what was ordered by the Deputy Registrar when she was the Taxing Officer for the two cases. Applications are dismissed with costs.

It is so ordered.

Dated and delivered at Nyeri this 16th day of May 2018

Nzioki wa Makau

JUDGE