



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC. APPLICATION NO. 31 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 14th June, 2017)

CHIURI KIRUI & RUGO ADVOCATES.....APPLICANT/ADVOCATE

-VERSUS-

TUSKER MATTRESSES LIMITED.....RESPONDENT/CLIENT

RULING

1. The Application dated 24/11/2016 filed by Kembi-Gitura & Company Advocates seeks:

1) This Honourable Court be pleased to set aside the decision of the taxing master delivered on 28th September 2016 in the Advocate/Client Bill of Costs dated 15th March 2016, the quantum awarded and the reasoning thereon.

2) This Honourable Court be pleased to re-tax the said Bill of Costs.

3) In the alternative prayer (2) above, this Honourable Court be pleased to remit the Bill of Costs dated 15th March 2016 for re-taxation before a different taxing master with appropriate directions therefore.

4) The costs of this application be provided for.

2. The Application is based on the following grounds:

a) That the taxing officer misdirected herself in law and fact by assessing the instruction fees under Schedule 6 A(i) (viii) of the Advocate (Remuneration) (Amendment) Order, 2014 in respect of Party and Party costs, whereas item one (1) was drawn under Schedule 6 B of the Advocate (Remuneration) (Amendment) Order, 2014 Advocate and Client costs which is the applicable Schedule.

b) That in taxing item one (1) of the Advocate/Client Bill of Costs dated 15th March, 2016 the taxing master erred in principle by failing to give due consideration to the proviso under Schedule 6(1) Advocate (Remuneration) (Amendment) Order, 2014 requiring the taxing master to take into consideration, in arriving at a determination of the fees, the nature and importance of the matter, the amount involved, the interests of the parties as well as the general conduct of the proceedings.

c) That the award by the taxing master of KShs.89,472.29/= and instruction fee of KShs.50,000/= is manifestly low as to justify the inference that it must have been arrived at injudiciously or on erroneously principles.

d) That the taxing master erred in principle by failing to give due consideration to the nature of the Applicant's instructions nor appreciate the work undertaken thereby treating the taxation as purely mathematical exercise.

e) That the taxing master abused her discretion by failing to clearly articulate the reasons for arriving at her decision.

f) That the taxation master in disallowing items No.2 to 36 as drawn in the Advocate/Client Bill of Costs dated 15th March, 2016 for want of substantiation abused her discretion under paragraph 13 A of the Advocate Remuneration Order, 2009 to direct the production of documentary evidence if the same was required.

3. The Application is supported by an affidavit sworn on the same date by Chiuri Ngugi an Advocate of the High Court of Kenya stating that the Applicant entered appearance on behalf of the Respondent where the Respondents were cited for contempt of Court.

4. After a ruling was delivered the Applicants submitted their fee note to the Respondents who ignored to settle the same. On 15th March, 2016 they instructed their Advocates to file an Advocate/Client Bill of Costs drawn exclusively under the Advocate (Remuneration) (Amendment) Order, 2014 Schedule 6. That the taxation of the bill of cost was fixed for 30th March 2016 and duly served but on the said date the Respondent did not attend and the taxation proceeded undefended.

5. On 28th September 2016 the taxation master delivered her decision in taxation allowing and taxing the bill of costs. By a letter dated 5th October, 2016 addressed to the Deputy Registrar, the Applicant gave its Notice of Objection to the sum allowed and taxed and requested for taxing master's reasons for the same.

6. That the Applicant requested for copies of the ruling through letters addressed to the Deputy Registrar on 29th September, 2016 and 1st November, 2016. That on the 8th November, 2016 the Applicant's representative visited the registry and found the decision in taxation but no letter from the Deputy Registrar responding to the Applicant's Notice of Objection.

7. The Respondent filed grounds of opposition on 3rd May 2017 stating that:

1) The Applicant has not laid down any plausible ground to warrant Court's interference with the decision of the Deputy Registrar/Taxing Master.

2) The Taxing Master was justified in taxing off the Applicant's Bill of Costs.

3) The Applicant's application is totally without merit and should be dismissed with costs.

8. It is evident that the Applicants duly served the Respondent a notice of taxation together with the Advocate/Client Bill of Costs scheduled for taxation on 30th June 2016 but the Respondent did not enter appearance.

9. Under Rule 11 of the Advocates Remunerations Order:

(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 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 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.....”.

10. In line with the above provisions, the Applicants wrote to the Deputy Registrar on 5/10/2016 objecting to the decision on taxation and requesting for reasons for assessing and allowing the Applicants Bill of Costs dated 15.3.2016. From the record, it is apparent that the Deputy Registrar did not respond to the letter hence the current reference before this Court.

11. The current reference by the Applicants is on the ground that the taxing officer taxed the bill under a wrong Schedule by assessing instruction fee under Schedule 6A 1(i) (viii) of the Advocates (Remuneration) Order, 2014 in respect of Party and Party Costs, whereas item (1) was drawn under Schedule 6B of the same order. Schedule 6A deals with taxation of Party and Party costs.

12. The bill presented before Court is an Advocate and Client costs bill and is drawn ostensibly under Schedule 6B. From the ruling of the Hon. Deputy Registrar she taxed this bill under Schedule 6A which is erroneous.

13. From the above finding it is my finding that the taxing master failed to address herself to the proper law applicable in the circumstances.

14. This Court should not interfere with the discretion of the taxing master unless it is to avert an injustice and there is an error that is very glaring.

15. In the instant case, the error is very apparent and I therefore allow the application.

16. I set aside the decision of the taxing master delivered on 28th September 2016. I remit the same for re-taxation before a different taxing master.

17. Costs in the cause.

Read in open Court this 14th day of June, 2017 in Nairobi.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wanjiku for Applicant – Present

Byamgisha holding brief for Miss Kirenge for Respondent