



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

MISC APPLICATION NO 34 OF 2016

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

VERSUS

TUSKER MATTRESSES LIMITED.....RESPONDENT/CLIENT

RULING ON REFERENCE

1. This ruling is on reference from the decision in taxation of the Advocate/Client Bill of Costs dated 15th March 2016.
2. In the application brought by way of Chamber Summons dated 24th November 2016 and filed in Court on 30th November 2016, the Advocate seeks the following orders:
 - a. That the decision of the Taxing Master delivered on 28th September 2016, in the Advocates/Client Bill of costs, the quantum awarded and the reasoning thereon be set aside;
 - b. That the Court be pleased to re-tax the Bill of Costs;
 - c. That in the alternative to prayer (b) above, the Court be pleased to remit the Bill of Costs dated 15th March 2016 for re-taxation before a different Taxing Master.
3. The application is premised on the following grounds:
 - a. That the Taxing Master erred in law and in fact by not indicating which schedule of the Advocates (Remuneration) (Amendment) Order, 2014 she relied on in taxing item 1 of the Advocate/Client Bill of Costs dated 15th March 2016;
 - b. That in taxing item 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) of the Advocates (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 of the Taxing Master of Kshs. 245,547 and instruction fee of Kshs. 200,000 is manifestly low as to justify the inference that it must have been arrived at injudiciously or on erroneous principles;
 - d. That the Taxing Master erred in principle by failing to give due consideration to the nature of the Applicant's instructions and to appreciate the work undertaken thereby treating the taxation as a

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 in disallowing items No 2 to 24 as drawn in the Advocate/Client Bill of Costs dated 15th March 2016 for want of substantiation, the Taxing Master abused her discretion under paragraph 13A of the Advocates Remuneration Order to direct the production of documentary evidence if required.

4. The Respondent objects to the reference on the ground that the Applicant has not laid down any plausible ground to warrant the court's interference with the decision of the Taxing Master.

5. The condition under which the Court may interfere with the decision of a Taxing Master were well restated by **Ringera J** (as he then was) in *First American Bank v Shah (2002) 1 EA* as follows:

“First, on the authorities, this court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.”

6. The Applicant submits that the figure awarded by the Taxing Master as instructions fees is too low. In her ruling dated 28th September 2016, the Taxing Master states that in reaching her decision she had taken into account the nature and importance of the cause, the interest of the parties and the general conduct of the proceedings. The Taxing Master had also borne in mind that at the time the Bill of Costs was presented, judgment had not been delivered.

7. Apart from a general complaint that the taxed amount was too low, the Applicant did not present any evidence to show that the decision by the Taxing Master was based on a wrong principle. The Court therefore found no fault with her decision.

7. The Applicant also faults the Taxing Master for disallowing items 2-24 for want of documentary proof. In this regard, the Applicant relies on paragraph 13A of the Advocates Remuneration Order to suggest that the Taxing Master ought to have called for supporting evidence on these items. I think this is a mis-statement of the law and practice.

8. As held in *L’Oreal v Interconsumer Products Limited [2014] eKLR* taxation of a bill of costs, much like regular litigation is based largely on evidence and any special claim must be supported by proof of expenditure. Being under an obligation to support all items on the Bill of Costs, the Applicant cannot shift this burden to the Taxing Master.

9. Ultimately, the Court finds no reason to disturb the taxation by the Taxing Master. The reference therefore fails and is dismissed with no order for costs.

10. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 21ST DAY OF JULY 2017

LINNET NDOLO

JUDGE

Appearance:

Ms. Wanjiku for the Applicant/Advocate

Ms. Kirenge for the Respondent/Client