



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

MISC APPLICATION NO 32 OF 2016

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

VERSUS

TUSKER MATTRESSES LIMITED.....RESPONDENT/CLIENT

RULING ON REFERENCE

1. This is a ruling on reference from the decision in taxation of the Advocate/Client Bill of Costs dated 15th March 2016.
2. The Advocate seeks the following orders:
 - a) That the decision of the Taxing Master delivered on 1st December 2016, in the Advocates/ Client Bill of costs, the quantum 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 Advocate raises the following points in grievance:
 - a) 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;
 - b) That the award of the Taxing Master of Kshs. 146,953.40 and instruction fee of Kshs. 127,500 is manifestly low as to justify the inference that it must have been arrived at injudiciously or on erroneous principles;
 - c) 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;
 - d) That the Taxing Master abused her discretion by failing to clearly articulate the reasons for arriving at her decision;

e) 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;

f) That the Taxing Master misdirected herself in fact by debiting the sum of Kshs. 100,000 from the taxed sum without taking into consideration that the sum had already been accounted for and debited by the Applicant in the Advocate/ Client Bill of Costs dated 15th March 2016.

4. In its grounds of opposition filed on 14th April 2014, the Respondent states 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. In its written submissions filed on 12th April 2017, the Applicant submits that Taxing Master ought to have used the amount pleaded in the claim as the basis for assessment of instructions fees. In her ruling in taxation, the Taxation Master states that she relied on the judgment amount to arrive at the instructions fees payable to the Applicant. I find no fault with this approach more so because employment claims are by nature unliquidated and the real value of the subject matter can only be determined in final judgment.

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. The only fault I find with taxation by the Taxing Master has to do with the sum of Kshs. 100,000 which she debited from the taxed amount. It is evident that this amount was in fact acknowledged and accounted for in the Bill of Costs as filed. The Taxing Master therefore erred in debiting this amount.

10. In the ultimate result, the Applicant’s reference succeeds only in relation to the sum of Kshs. 100,000 debited by the Taxing Master. The taxed costs will be enhanced by the said sum of Kshs. 100,000.

11. As the reference has succeeded only in part, each party will bear their own costs.

12. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 21ST DAY OF JULY 2017

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JUDGE

Appearance:

Ms. Wanjiku for the Applicant/Advocate

Ms. Kirenge for the Respondent/Client