



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

MISC APPLICATION NO 35 OF 2016

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

VERSUS

TUSKER MATTRESSES LIMITED.....RESPONDENT/CLIENT

RULING ON REFERENCE

1. By a Chamber Summons dated 24th November 2016 and filed in Court on 30th November 2016, the Applicant has challenged the taxation by the Taxing Master with respect to 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 28th September 2016, in the Advocate/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 the Taxing Master misdirected herself in law and fact by assessing the instruction fee under Schedule 6 A 1 (b) of the Advocates (Remuneration) (Amendment) Order, 2014 in respect of *party and party costs*, whereas item 1 was drawn under Schedule 6 B of the Advocates (Remuneration) (Amendment) Order, 2014 in respect of *Advocate and Client costs* which is the applicable schedule.
 - 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 by the Taxing Master of Kshs. 102,613 and instruction fee of Kshs. 75,000 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 opposes the reference citing lack of plausible grounds 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 her ruling dated 28th September 2016, the Taxing Master cites Schedule 6 A 1 (b) of the Advocates (Remuneration) (Amendment) Order, 2014 as the basis of her assessment of instruction fees payable to the Applicant. This schedule relates to *party and party costs*. The subject matter having been an Advocate/ Client Bill of Costs, the Taxing Master ought to have relied on Schedule 6 B of the Advocates (Remuneration) (Amendment) Order, 2014.

7. In light of this, it seems to me that the decision by the Taxing Master was based on an error of principle and the Bill of Costs dated 15th March 2016 is therefore remitted for re-taxation before a different Taxing Master.

8. I make no order for costs.

9. 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