



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 89 OF 2016
S. GICHUKI WAIGWA & ASSOCIATES ADVOCATES.....APPLICANT
VERSUS
SYLVIA MUTUI MAGOTSI.....RESPONDENT
RULING

1. The application before me dated 20th March, 2017 sought orders that:
 - a. The ruling of the Deputy Registrar dated 1st February, 2017 be set aside.
 - b. The court reassess the fees under item 1 of the Bill of Costs dated 25th July, 2016.
 - c. The court enlarges time for filing a reference against the said decision.
2. The application was premised on the grounds among others that:
 - a. The Bill of Costs was taxed on 1st February, 2017 at Kshs 1,494,957.20 against the applicant.
 - b. The applicant obtained a copy of the ruling on 16th February, 2017.
 - c. The applicant was dissatisfied with the decision of the taxing officer in taxing the bill at 1,494,957.40.
 - d. The taxing officer failed to consider the applicant had paid Kshs 400,000/= as part payment for fees.
 - e. The item 1 which was instruction fees was inordinately high and not commensurate with work done by the advocate.
 - f. The taxing officer acknowledged that the matter was neither or complex hence there was not need to increase the instruction fees from minimum by the taxing officer.
3. In his submissions in support of the application, Mr Onsongo for the applicant submitted that under paragraph 11(4) of the Advocates Remuneration Order, the court has the power to enlarge the time for an applicant. According to counsel, the application herein was filed on 20th March, 2017 some twenty days

late. The applicant received a copy of the ruling on 23rd February, 2017 and after going through it realized that Kshs 400,000 paid to the advocate was not debited by the advocate in the bill of costs. The applicant had to obtain her statement from Chase Bank to prove the payment. The delay was therefore not inordinate or inexcusable. No prejudice had been occasioned to the advocate.

4. Regarding principles which would justify interference with taxing officer's discretion counsel relied on the case of **Nyangito & Co Advocates Vs Doinyo Lessos Creameries Ltd [2014] eKLR** where it was stated that the court could not interfere with taxing officer decision unless it was shown that the decision was based on an error of principle of the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle.

5. If the court considers that the decision of the taxing officer discloses an error of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment. The court would further not interfere with the assessment simply because in its opinion the amount was high.

6. According to counsel, the taxing officer failed to provide reasons for taxation in the ruling or after request by the applicant. Counsel contended that the taxing office did not first set out the basic minimum allowed by the Advocates Remuneration Order before increasing it. Counsel further complained that the taxing officer failed to consider that Miscellaneous 89 and 90 arose from similar facts hence as much as possible should have reflected similar amount. He also complained that the taxing officer failed to consider that the applicant had paid Kshs 400,000/= to the advocate.

7. Mr Onsongo submitted that the taxing officer did not outline in her ruling the basis for awarding Kshs 800,000/= as instructions fees. According to counsel, the taxing officer actually acknowledged that the matter involved a normal employer-employee relationship and there was no basis for awarding the advocate such a substantial amount.

8. Mr Waigwa for the respondent submitted that prayer 2 and 3 in the application could not possibly be granted simultaneously since paragraph 11(2) of the Advocates Remuneration Order provided for notifying the taxing officer and upon receipt of reasons for the decision the applicant to refer the matter to a Judge. According to counsel paragraph 11(4) dealt with the power of the court to enlarge time yet the prayer sought in the application for reassessment of the fee had no basis whatsoever.

9. As correctly pointed out by counsel for the applicant, the principles governing interference with a taxing master's decision were laid out very well in the case of **Nyangito & Co Advocates Vs Doinyo Lessos Creameries Ltd [2014] eKLR**. The applicant has to show that the decision was based on an error of principle or the fee awarded was manifestly excessive. The court would not interfere simply because in its opinion the amount was high. The Judge has to be satisfied that the error of principle materially affected the assessment.

10. The court has reviewed and considered the ruling of taxing officer dated 1st February and is persuaded by the soundness of her reasoning however, she seemed not to have taken into account the fact that the applicant had made down payment of Kshs 400,000/= maybe this was never brought to her attention. Nothing in the record shows it was. If this was done, it could have significantly affected item 1 on instruction fees. Further the fact that taxing officer awarded Kshs 289,000 in Miscellaneous 89 of 2016 and a sum of Kshs 1,494,957.20 in this particular matter displays wide disparity which could manifest an error of principle on the part of the taxing officer.

11. The court in the circumstances allows prayer 1 and 3 of the chamber summons and hereby remits the Bill for reconsideration by the taxing officer.

12. It is so ordered.

Dated at Nairobi this 10th day of November 2017

Abuodha J. N.

Judge

Delivered this 10th day of November 2017

Abuodha J. N.

Judge