



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 138 OF 2012**

**JAYESH M. SUTARIA.....CLAIMANT**

**-VERSUS-**

**JAMBO BISCUITS (K) LTD.....RESPONDENT**

**RULING**

**Introduction**

1. On 23.6.2015, the Honourable Deputy registrar taxed the claimant's party and party bill of costs dated 14.1.2014 at Kshs 184,343.30. The respondent (hereinafter called the applicant) was dissatisfied and challenged it by the reference to this contained in Chamber Summons dated 20.4.2016. The grounds upon which the reference is founded are:

- a) ***That the Taxing Master refused, neglected and or failed to calculate instructions fees based on the final award of Kshs 143000 made by the Honourable Court.***
- b) ***That the Taxing Master refused, neglected and or failed to Adjust the getting up fees according to (a) above.***
- c) ***That the Taxing Master refused, neglected and or failed to consider the applicant's objections and submissions in respect of all the items in the bill without any sufficient reason and proceeded to exercise discretion in allowing them.***
- d) ***That the Taxing Master refused, neglected and or failed to Exercise his discretion in accordance with the applicable law and the principles governing taxation of party and party bill of costs and thereby arrived at an amount that is excessive, oppressive and manifestly high in the circumstances and facts of the case.***

2. The chamber summons is supported by the affidavit of Nitin Dawda sworn on 20.4.2016. The affidavit basically repeats the grounds raised in the Chamber Summons and annexes the disputed bill of costs, the applicant's written submissions before the Taxing Master and the impugned Ruling.

3. The claimant has opposed the reference by his own Replying affidavit sworn on 9.5.2016 and filed on 10.5.2016. Without citing any reasons, the claimant contends that the reference has no merits and should be dismissed with costs. The claimant however admits that although his suit was for Ksh 505,000, the final award was Kshs 143000.

4. The reference was disposed of by written submissions filed by both parties.

### **Analysis and Determination**

5. The whole ruling by the Taxing Master is copied herein below:

***“The bill of costs dated the 14.1.2014 duly served and opposed by the respondent. I have considered this bill and the submissions for and against it.***

***Item 1 and 2 are letters as a result of the pending action. They are therefore costs incurred as a result of the pending Action herein. I tax them as drawn. On instruction fees and exercising discretion due to the nature of complexity of the claim, I tax it at Kshs 63000 as drawn. All the other items are largely drawn within the scale and determine the due discretion of tax item as drawn. Bill is therefore taxed at Kshs 184,343.30.”***

6. After considering the impugned ruling and the rival submissions made, the main issue for determination is whether the Taxing Master failed to appreciate law and the principles governing taxation of party and party bill of costs and instead exercised his discretion unlawfully and thereby arrived at amount that is oppressive, excessive and manifestly high.

### **Breach of the law and principles of taxation of costs**

7. There is no dispute that the party and party bill of costs in issue was for Kshs 184 343.30 and it was taxed as drawn. There is also no dispute that the Taxing Master never considered the value of the case based on the pleadings and the final award by the Court while allowing the item of instruction fees as drawn. Instead the Taxing Master made a general statement that he had considered the “nature of complexity of the claim”. In my view, and I agree with the applicant, that such default was the first error the Taxing Master made. He did so by totally ignoring schedule VI of the Advocates (Remuneration) (Amendment) order 2009 paragraph 1(b).

8. Another error by the Taxing Master in his ruling is when he allegedly exercised discretion in allowing all the other items in the bill of costs as drawn. In my view, the Taxing Master has no discretion at all in taxing costs except on the item of instruction fees as was held by the Court of Appeal in Civil Appeal No 66 of 1999, Joreth Ltd vs Kigano and Associates:

***“The value of the subject matter of a suit for purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not so ascertainable, the taxing officer is entitled to use his discretion.”***

9. In view of the foregoing decision and the clear provisions of schedule VI of the Advocates Remuneration Order, I see no discretion donated to the Taxing Master while taxing costs other than the instruction fees to an Advocate. The said Remuneration order provides specific costs charged for specific services rendered by an Advocate or costs incurred by the party. It is such specific charges which should be compared by the Taxing Master during taxation of the bill of costs. The taxing master must consider each and every item in the bill of costs and determine whether it is in all fours with the figures provided for in the Remuneration order. That, should the Taxing Master find the costs charged to be higher than the amount provided for in the Remuneration Order, he has no option but to tax it off and award the rightful amount.

10. Having made a finding that the Taxing Master erred in failing to comply with the law and the principles governing the taxation of party and party bill of costs and instead unlawfully exercised some imagined discretion, I have no option but to set aside as prayed, the ruling dated 23.6.2015 and the certificate of costs dated the same date. In addition I refer back the claimant’s bill of costs to be taxed afresh by Taxing Master other than Honourable G.O. Kimanga.

### **Disposition**

11. For the reasons stated above, I allow Chamber Summons dated 20.4.2016 and order for fresh taxation of the claimant's bill of costs dated 14.1.2014 by another taxing officer. The Applicant will have costs of this Reference.

**Ruling dated, delivered and signed at Mombasa this 7<sup>th</sup> day of October 2016**

**O. MAKAU**

**JUDGE**