



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

PETITION NO. 20 OF 2013

RULING

DENIS MOTURI ANYOKA

VERSUS

KENYA REVENUE AUTHORITY

THE COMMISSIONER GENERAL

AND

SENIOR DEPUTY COMMISSIONER-HUMAN RESOURCE

DELIVERED BY

HON. LADY JUSTICE MAUREEN ONYANGO

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DENNIS MOTURI ANYOKAPETITIONER

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KENYA REVENUE AUTHORITY1ST RESPONDENT

THE COMMISSIONER GENERAL.....2ND RESPONDENT

SENIOR DEPUTY COMMISSIONER-HUMAN RESOURCE.....3RD RESPONDENT

RULING

The application herein arises from the ruling of the Deputy Registrar on a bill of costs filed by the Respondent on 31st July 2013 and assessed on 14th January, 2014. The Applicant is only contesting the

item on instructions fees which was taxed from Kshs.3,000,000/= to Kshs.500,000/=.

The background of the case is that the Petitioner herein filed this petition in the High Court Constitutional and Human Rights Division on 24th May 2013 seeking orders to have the Respondent compelled to supply him with certain documents to enable him prepare his defence in a disciplinary hearing. The Petition was transferred to this court on 27th May 2013. Parties thereafter recorded a consent in the following terms:-

BY CONSENT

1. The documents forwarded to the Petitioner by the Respondent's letter dated 24th June 2013 are in full and final disclosure.
2. The costs of the Petition be awarded to the Petitioner to be taxed by the court.

It is pursuant to this consent order that the Deputy Registrar taxed the bill, which the Respondent is contesting by its Chamber summons application dated 13th February, 2014.

When the application came up for hearing on 4th April, 2014 the parties agreed to proceed by way of written submissions.

In its submissions filed in court on 11th April, 2014 the Applicant/Respondent (herein after referred to as the Respondent) submits that the instructions fees assessed by the Deputy Registrar is neither justifiable nor reasonable. That this was a simple petition requesting the court to declare the Respondent's failure to supply the petitioner with documents in their custody as a violation of his right to a fair administrative action and right to a fair hearing. That the Respondent did not oppose the petition but proceeded to supply the documents. That the Respondent further explained by affidavit the reasons for delay in delivering the documents to the Petitioner in good time.

The Respondent further submitted that the research work involved was not exceptional and did not justify fees in the sum of Kshs.500,000/= as there was nothing complex about the case.

The Respondent submitted that the principles on taxation have been pronounced in several judgments and relied on the following decisions: Juma and other vs. Attorney General (2003) AHRLR 179 (KeHC 2003) and Joseph Mwenda Mbuko vs. Provincial Police Officer & 2 others (2013) eKLR, where the court pronounced the right to a fair trial and pre-trial disclosure of material statements and exhibits.

The applicant also relied on the case of Ramesa Naran Patel vs. Attorney General & Another (2012) eKLR where the court adopted the finding in the case of First American Bank of Kenya Limited vs. Gulab P. shah & 2 others (2002) IEA 64 at page 70-71 where the court held that **“As regards the increase of instructions fees, I accept that this is a matter of discretion of the Taxing Master. However the discretion must be exercised rationally. Now the only reason given by the Taxing Officer there to increase the fees is that the Defendants had done some research on the law and they had put a well researched defence. I am of the opinion that if a defendant does research before filing a defence informed by such research he has done no more than expected. The research is not necessarily indicative of the complexity of the matter. It may well be indicative of the advocate's unfamiliarity with basic principles of law. “Such unfamiliarity should not be turned into an advantage against the adversary”.**

The Respondent further submitted that this being a constitutional application the court should apply the decision in the case of Republic Vs. Minister for Agriculture and 2 others Ex-parte Samuel W'Njuguna & 6 others (2006) eKLR where there court held that **“It is noteworthy that Counsel for the Respondents herein invoked many authorities from private law claims sounding in damages and entailing pecuniary awards. Such examples do not in my opinion fall in the same class as most public law claims such as those in Judicial Review, in constitutional Applications, in Public Electoral Matter, etc. Such matters are in a class of their own and instructions fees allowable in respect of them**

should not in principle be extrapolated from the practices obtaining in private law domain which may involve business claims and profit calculation.”

The Respondent further referred the court to the notion of reasonableness in taxation of costs as considered in the case of Danson Mutuku Muema Vs. Julius Muthoka Muema & others, Civil Appeal No.6 of 1991 (Machakos) where Mwera J. stated as follows: **“The taxing officer was entirely right to give the costs here within her discretion. Although the sum would not be less than Kshs.4,500/= yet it had to be reasonable. Is Kshs.40,000/= allowed, about ten times the sum provided for, reasonable?. This court does not think so. It is definitely excessive. Three or four times perhaps could be fair but not ten times”**.

The Respondent also referred the court to the case of Premchard Raichura & another (1972) EA 162 where the court held that **“costs should not be allowed to rise to such a level as to limit access to the courts to the wealthy only”**.

The Respondent urged the court to find that the Taxing Master erred in awarding Kshs.500,000/= whereas an amount of Kshs.84,000/= would have been justifiable and reasonable. The Respondent prayed that the award be set aside and substituted with Kshs.84,000/=.

The Petitioner in his written submissions relied on the cases of First American Bank of Kenya (ibid) and Premchard Raichura & another (ibid) where the court held respectively **that “First I find that 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”** and **“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other”**.

The Petitioner submitted that from the cases referred to it is clear that there is a general caveat on judicial review of quantum of taxation unless there is a clear error of principle or the sums awarded are either manifestly high or low as to lead to an injustice.

The Petitioner further submitted that the Respondent had not raised any plausible grounds to warrant interference with the discretion and decision of the Taxing Master in this case.

The Respondent urged the court to apply the principles enunciated in Premchard Raichuna Limited & Another (ibid) and find that the Taxing Master has not breached any principle in relation to the taxation in this case to justify interference by this honorable court and that the application by the Respondent be dismissed.

I have considered the application and the response thereto, the written submissions, the authorities and the ruling of the Taxing Master. The relevant portion of the ruling of the Taxing Master is reproduced below:

The Taxing Master found that **“the petition did not raise any complex issues and above all was settled by consent of parties prior to commencement of the main hearing”** and at the same time that **“The court takes cognizance of the fact that this was no normal case but a Constitutional Petition redirected to the Industrial Court from the Judicial Review and Constitutional and Human Rights Division of the High Court thus weighty issue by its own right....”**. I find these two findings of the Taxing Master to be contradictory. A matter that does not raise any complex issues, and which is settled by consent before hearing cannot become a weighty issue by virtue of being a Judicial Petition redirected from the Judicial Review and constitutional and Human Rights Division of the High Court. The Petitioner was redirected to this court only because it falls within the jurisdiction of this court.

Having found that the petition did not raise any complex issue, there was no justification to award

Kshs.500,000/= which is almost 20 times higher than the minimum instructions fees. As stated by Justice Mwera in the case of **Danson Mutuku Muema** (ibid), three or four times would probably be fair, not ten or more times as in this case.

I find that the Taxing Master erred first in finding that this matter became weighty simply because it was a petition transferred from the Judicial Review and Constitutional and Human Rights Division of the High Court and secondly, that the fee awarded was excessive.

For these reasons I set aside the award of Kshs.500,000/= and substitute it with the sum of Kshs.100,000/=. The total bill will therefore be Kshs.120,245/=.

Orders accordingly.

Dated in open court this 7th day of July, 2014.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Ms. Okelo holding brief for Achach for Petitioner

No appearance for Claimant