



**Nairobi City Water & Sewerage Co. Ltd v Koceyo & Company Advocates (Civil Miscellaneous Application E435 of 2021) [2024] KEHC 353 (KLR) (Civ) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL MISCELLANEOUS APPLICATION E435 OF 2021  
AN ONGERI, J  
JANUARY 26, 2024**

**BETWEEN  
NAIROBI CITY WATER & SEWERAGE CO. LTD ..... APPLICANT  
AND  
KOCEYO & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. The advocate filed a reference dated 28/5/2022 on the following grounds;
  - i. That the taxation ruling delivered on 28/4/2022 be set aside.
  - ii. That the bill of costs dated 31/8/2021 be retaxed in its entirety.
  - iii. That the court be pleased to grant orders as it considers just and proper in the circumstances.
  - iv. That the costs of the application be provided for.
2. The parties filed written submissions as follows; the applicant submitted that the issue in question was raised before the deputy registrar and unfortunately the same was not discussed and/or adjudicated hence the reference herein. Prior to the respondent filing his Notice of Taxation and Bill of costs, the applicant was not served with the respondent's fee note and/or Bill of Costs. The applicant was only served with the Notice of Taxation and the Advocates-Client Bill of Costs herein.
3. The applicant submitted that the respondent's instructions vide the letter dated 19/4/2013, was to peruse the file to ascertain its position. They thus did not institute any proceeding neither did they enter appearance nor to defend the matter. Thus, the use of Schedule VI (l)(b) does not apply. The matter was not of a high importance as the applicant was not a named party therein and would only



- have been enjoined as an interested party therein as the actions complained of occurred before the existence of the applicant.
4. The applicant submitted further that the responsibility placed upon counsel was rather of a simplistic nature as it was only to peruse the file, the time spent therein was also diminished as there was no research required or any other special skills to peruse a file.
  5. On getting up fees the applicant argued that the same if provided for under schedule 6 of the *Advocates Remuneration Order* 2009. It is allowable in addition to the instruction fees and is not less than a third of the instructions fees allowed on taxation. However, Paragraph 2 (ii) states that no fee under this paragraph is chargeable until the case has been confirmed for hearing. That in this matter the respondent had strict instructions to peruse the matter and ascertain its position. The respondent is therefore not entitled to getting up fees.
  6. The respondent on the other hand submitted that the applicant has not provided reasons for their claims. When taxing the bill of costs, determining the subject matter's value beforehand is required. Where the value of the subject matter of a suit is known or can be determined from the pleadings, judgment or settlement. The Taxing Officer has no discretion in assessing instruction. The Taxing Officer is expressly allowed to consider any such factors as he or she may decide to impose instructional fees where the value of the subject matter is uncertain or cannot be determined.
  7. It was the respondents' submission that the Taxing officer, in proceeding to consider the Advocate-Client Bill of Cost dated 7/9/2021 was justified in concluding that the respondent was entitled to taxed costs of Kshs. 152,424.
  8. I have considered the submissions made by the both parties to this reference. I find that the Taxing Master applied the correct principles in taxing the bill of costs.
  9. The Taxing Master relied on the case of *Joreth Limited v Kigano and Associates* [2002] 1 E.A 92 Where the principles to be considered were laid down which include the following;
    - i. that the court cannot interfere with the taxing officer's discretion on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle;
    - ii. it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors and, according to the remuneration order itself, some of the relevant factors to be taken into account include the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge;
    - iii. if the court considers that the decision of the taxing officer discloses errors 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 and the court is not entitled to upset a taxation because in its opinion, the amount awarded was high;
    - iv. it is within the discretion of the taxing officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary.”
  10. I find no reason to interfere with the taxing officer's taxation.



11. In the case of *KANU National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR, it was held that:

“The general principles governing interference with the exercise of the taxing master’s discretion were authoritatively stated by the South African court in the case of *Visser v Gubb* 1981 (3) SA 753 (C) 754H – 755C as follows:-

“The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal.”

12. I find that the Taxing Master taxed the bill of costs to scale and I find no basis for interfering with the same. I dismiss the reference and uphold the taxation.
13. Each party to bear its own costs of the reference.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY, 2024.**

**A N O N G E R I**  
**JUDGE**

