



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW MISC. APPLICATION NO. E051 OF 2021

ANDREW KANARI RUIGORA (Suing as the Personal Rep of The Estate of

TERESIA MUKAMI KANARI (DECEASED).....**APPLICANT**

VERSUS

GACHOKA MWANGI ADVOCATES.....**RESPONDENT**

(Being an application against the decision of Senior Deputy Registrar

Hon. C.A. Muchoki dated 25th February, 2021)

Arising from

MISCELLANEOUS CIVIL APPLICATION NO.19 OF 2019

GACHOKA MWANGI ADVOCATES.....**APPLICANT**

VERSUS

ANDREW KANARI RUIGORA (Suing as the Personal Rep of the Estate of

TERESIA MUKAMI KANARI (DECEASED).....**RESPONDENT**

RULING

1. The application before this court is the one dated 9th April, 2021 seeking the following orders;

i. The Honourable court be pleased to set aside the decision of the Senior Deputy Registrar Hon. Muchoki delivered on 25th February, 2021 (hereinafter referred to as the ruling) to the extent that it related to the reasoning and determination pertaining to items no.1 and on calculations arriving at Kshs. 250,692.24/= in the Advocate/ Client bill of costs dated 11th June, 2019.

ii. This Honourable court be pleased to re-assess the fees due on the aforesaid items of the advocates in respect of the Bill of Costs and make findings on the same.

iii. In the alternative and without prejudice to the foregoing, this honourable court be pleased to remit the aforesaid items of the bill of costs to another taxing officer for review and reconsideration with direction on taxation.

iv. The costs of this application be awarded to the Applicant's advocate.

2. The application is supported by the grounds on its face and a supporting affidavit dated 9th April, 2021 sworn by Namada Simoni, an advocate of the High Court of Kenya representing the Applicant/ Respondent in this matter.

3. The deponent averred that the Respondent herein was given instructions to represent the Applicant in a declaratory suit against Kenya Orient Insurance Company. The claim in the said matter amounted to Kshs. 920,907/= which the Respondent retained, demanding payment of advocates fees. It was also deposed that parties had agreed to charge a fees of 30% and not hourly.

4. It is deposed that the Respondent's bill of costs served upon the Applicant under Misc. Application No.19 of 2019 was taxed on 25th February, 2021. The Applicant contends that the taxing master erred in awarding a higher instruction fees on item 1 despite the suit being straightforward and having stated in her ruling that the Respondent had not demonstrated or satisfied her as to the number of hours devoted after counsel was instructed by the Applicant. It was urged that the Kshs. 90,000/= awarded was excessive.

5. It was contended that the taxing master also failed to calculate correctly the total cost of the bill as provided for under Schedule 7-part B of the Advocates Remuneration Order as 50% of 133,624/= is not Kshs. 82,490/= as was calculated. The deponent averred that the taxing master erred in law by failing to apply the applicable principles and taxing the Bill of Costs contrary to schedule 7 of the Advocates Remuneration order.

6. The Applicant also filed written submissions dated 24th September, 2021. In the submissions learned counsel contended that section 3 of the Fair Administrative Actions Act, 2015, section 25 of the Civil Procedure Act and paragraph 11(1) (2) of the Advocates Remuneration Order emphasis on the need to give reasons for a decision reached in the course of a judicial process. To support this argument counsel cited the case of **K Mberia & Partners Advocates v. Property Reality Limited [2018] eKLR**.

7. On the court's discretion to interfere with a taxing master's decision counsel cited the case of **KANU National Elections Board & 2 Others v. Salah Yakub Farah [2018] eKLR** and **First American Bank of Kenya v. Shah & Others [2002] 1 EA 64**.

8. The Respondent in response to the application filed grounds of opposition dated 26th October, 2021 in which four grounds were raised. These grounds are that the application is intended to deny the Respondent advocate fees for work done, that there was no deviation on the part of the taxing master, that the application is a delaying tactic and finally that the application is made by a party whose aim is to tire down the advocate.

9. Further, a reply to submissions by the objector was also filed on 26th October, 2021. In the reply the Respondent contended that the said objection is unwarranted as the money found due to the plaintiff in the said declaratory suit was Kshs. 758,000/=. Further, that the agreement in the instruction note was to the effect that should a dispute arise between the client and advocate, party and party costs would be payable to the advocate under schedule 7 of the Advocates Remuneration Order, 2014.

10. It was also deposed that the Applicant's statement that the parties had entered into an agreement for fees to be charged at 30% was not backed by any supporting document. Further, that in the instruction note parties had agreed that advocates fees would be charged hourly and it was therefore right for the taxing master to award instruction fees on the minimum expected under schedule 7 of the remuneration order (2014).

11. In conclusion, the Respondent argued that the taxing master taxed off items 2,23,24-29 as had been challenged by the Applicant and the Kshs. 250,692.24/= ought not to be interfered with. Further, that if the amount payable was to be calculated according to what the Applicant was claiming then the total amount due would be Kshs. 276,907/= and not Kshs. 250,693.24/=.

Analysis and Determination

12. I have considered the application and parties' submissions. The main issues for determination are whether the decision of the Taxing Master dated 25th February 2021 should be set aside and, if in the affirmative, whether the bill should be re assessed by this court or in the alternative remitted to a different Taxing master for re assessment.

13. The Applicant is disputing Item 1 and calculations arriving at the sum of Kshs. 250,692.24/= on the ground that the Taxing Officer erred in principle in awarding higher instruction fees despite the matter being a declaratory suit which is straightforward with no complex issues. Secondly, that the Taxing Officer misdirected herself and acted contrary to the established principles by failing to calculate correctly the total costs of the bill as provided for in the Advocates Remuneration Order, Schedule 7-part B. Lastly, the taxing officer erred in law by failing to apply the applicable principles and taxed the bill contrary to the applicable schedule 7 provided for in the Advocates Remuneration Order.

14. It is now trite law that the High Court will only interfere with the decision of a Taxing Master in cases where there has been shown to be an error in principle. In **Republic v Ministry of Agriculture & 20 Others Ex-Parte Muchiri W' Njuguna [2006] eKLR**, Hon. Justice J.B. Ojwang (Retired) stated as follows: -

“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, 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 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 manifestly excessive as to justify an interference that it was based on an error of principle.” [Emphasis mine]

15. It must be noted that before the court can overturn the taxing master's judgment, it must be satisfied that the taxing master's conclusion was manifestly incorrect. This means that the court will not overturn the taxing master's decision in every case where the court's view of the issue differs from the taxing master's, but only when the court is satisfied that the taxing master's view of the issue differs so materially from its own that the ruling should be deemed void.

16. The Applicant herein has failed to annex the ruling of the taxing master to either the affidavit in support of the application or to the submissions nor have any reasons for the taxation been availed to the court. These reasons need not be formal reasons requested of the Taxing Master. Where the reasons are discernable from the decision, that should suffice.

17. The court in **Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Limited [2012] eKLR**, held that:

“It is therefore clear that the interpretation by the court especially the High Court on this issue is far and varied. In my view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles.

However, where there are reasons on the face of the decisions, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of a reference since that insufficiency may be the very reason for preferring a reference”.

18. There being no reasons attached, either in the form of the decision of the taxing master or formal reasons given on request, the application herein is incompetent and is therefore struck out. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF MARCH, 2022

A. K. NDUNG’U

JUDGE