



Awino v Megascop Healthcare (K) Limited & 2 others; Ethics and Anti-Corruption Commission (Interested Party) (Anti-Corruption and Economic Crime Petition E001 of 2023) [2024] KEHC 1147 (KLR) (Anti-Corruption and Economic Crimes) (8 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIME PETITION E001 OF 2023**

EN MAINA, J

FEBRUARY 8, 2024

BETWEEN

FRANCIS AWINO PETITIONER

AND

MEGASCOPE HEALTHCARE (K) LIMITED 1ST RESPONDENT

CABINET SECRETARY – MINISTRY OF HEALTH 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

RULING

1. This is a ruling on the reference filed by the Petitioner/Applicant in respect to the taxation of the 1st Respondent's Party and Party Bill of Costs herein. The same is dated 26th April 2023.
2. The Petitioner/Applicant seeks orders that this court set aside, review or vary the taxing officer's ruling dated 18th September 2023 or in the alternative to remit the bill of costs to the taxing officer for taxation.
3. The gravamen of the application is that the taxing officer taxed the bill as though it were not defended and hence ignored the Petitioner/Applicant's submissions which were on record; that the failure to consider the submissions is a materially grave misdirection and an apparent error of principle which warrants this court to order a taxation of the bill afresh.
4. Counsel relied on the following cases *Ng'ang'a & Another V Owiti & Another* [2008] 1 KLR (EP) 749. *Ali Ngumbao Baya & 2 Others v Director of Public Prosecution* [2016] eKLR. *Kenya Orient*



Insurance Limited v Oraro & Company Advocates [2014] eKLR. Joseph Mwangi Njoroge V Republic [2017] eKLR. *Karen & Associates Advocates v Caroline Wangari Njoroge* [2019] eKLR. *Republic v Ahmad Abolfathi Mohammed & Another* [2019] eKLR. *Agip Kenya Ltd V Highland Tyres Ltd* [2001] Klr 630 *Kipkorir Titio & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR. *Kamunyori & Company Advocates v Development Bank Of Kenya Ltd* [2015] Civil Appeal No. 206 of 2006. *Kenya Forest Service v Wanyama C.S Company Advocate* [2021] eKLR.

5. Learned Counsel for the 1st Respondent (Respondent in the reference) vehemently opposed the reference and submitted that the learned Deputy Registrar applied all the relevant principles of taxation of costs and properly exercised their discretion in taxing the Bill of Costs and the same ought not to be interfered with in any way. Counsel further submitted that in exercising her discretion, the learned Deputy Registrar adhered to the set-out principles of law in awarding the instruction fees as well as the attendant costs which were not in the circumstances excessive. Additionally, that the reasons for the taxation are clearly stated in the impugned ruling and thus the ruling ought to stand.
6. Counsel contended that the 1st Respondent filed his submissions in the Bill of Costs on 10th July 2023 when there was no response to the bill of costs hence the bill of costs was unopposed; that thereafter the 1st Respondent filed supplementary submissions on 10th July 2023; that taxation of costs is a discretionary matter and that in exercising her discretion the taxing officer applied all the relevant principles applicable to taxation and hence this court ought not to interfere with that discretion. Counsel argued that the submissions were not in any event binding on the taxing officer and that this court ought to dismiss this reference with costs to the 1st Respondent.
7. Counsel for the 1st Respondent placed reliance on the following cases: - *Republic v Ministry of Agriculture & 2 others; Ex-parte Muchiri W. Njuguna & Others* [2006] eKLR. *Kanu National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR. *Kipkorir Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR. *Stephen Boro Gitiba v Family Finance Building Society & 3 others* [2009] eKLR. *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another* [2014] eKLR. *Nancy Wambui Gatheru v Peter W. Wanjere Ngugi* Nairobi HCCC No. 36 of 1993 (unreported).

Determination

8. I have carefully considered the application, the grounds thereof and the rival submissions of learned Counsel for the parties. As I see it the Petitioner/Applicant's complaint is that he was not heard in the taxation; that his submissions which were already on record were ignored. Counsel for the 1st Respondent has not disputed that averment but contends that the submissions do not in any event bind the taxing master. Counsel for the 1st Respondent has invited this court to consider only whether the taxing officer exercised her discretion judicially in arriving at the quantum of costs.
9. I am however not persuaded by the argument of Counsel for the 1st Respondent. Article 50(1) of the Constitution states that: -

“ 50.

(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
10. The right to fair hearing is sacrosanct. It is one of the rights which as provided in Article 25(c) of the Constitution are non-derogable. It cannot therefore be blown or wished away. Accordingly, I find merit



in the Petitioner/Applicant's complaint and find that much as the taxing officer has discretion, taxing the bill without taking into consideration the Petitioner/Applicant's submissions was a material error of principle and a misdirection on her part.

11. The upshot is that the reference is therefore allowed and the bill is remitted back to the taxing officer for consideration of the submission of all the parties.
12. While costs follow the event the order that best commends itself to me is that each party shall bear its own costs the error having been on the part of the court but not the parties.

It is ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 8TH DAY OF FEBRUARY 2024.

E N MAINA

JUDGE

