



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

MISC. APP. NO. 65 OF 2019

IN THE MATTER OF ADVOCATES ACT

AND

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER

IN THE MATTER OF TAXATION OF ADVOCATE – CLIENT BILL OF COSTS

BETWEEN

MWANIKI GITAU & CO. ADVOCATES.....APPLICANT

AND

JAMES NDINA GITONGA.....1ST RESPONDENT

CHRISPUS MBICI GAKUL.....2ND RESPONDENT

RULING

What is before Court for determination are the Applicant's/Advocate's Notice of Motion application dated the 23rd January, 2020 and the Respondents' Chamber Summons application dated the 29th January, 2020. The Applicant seeks for a judgement to be entered against the Respondents for the sum of Kshs. 659,203 plus costs and interest at 14% from 11th July, 2019 until payment in full. The application is premised on the grounds on the face of it and the supporting affidavit of JOSEPH MWANIKI GITAU who is an Advocate and the Applicant herein. He explains that the cause came up for taxation on 13th January, 2020 before the Deputy Registrar. Further, the same was taxed at Kshs. 659,203 and it is necessary to have the same adopted and entered as judgement accordingly for purposes of execution. Further, there is no dispute on retainer.

The Respondents filed their Chamber Summons application dated the 29th January, 2020 brought pursuant to Paragraph 11(2) of the Advocates Remuneration Order where they sought for orders to set aside the decision of the Deputy Registrar, Taxing officer dated 13th January, 2020 on items 3 to 205 and item on interest on the Advocate's Bill of Costs. The application is premised on the grounds on the face of it and the supporting affidavit of JAMES NDINA GITONGA who is the 1st Respondent/Applicants where he deposes that they are dissatisfied with the Ruling of the Taxing Master in respect to the Bill of Costs dated the 13th January, 2020 and seeks for the Court to take a fresh look and set it aside.

The Advocates/ Respondent in opposition to the Chamber Summons Application filed Grounds of Objection where they contended

that the Respondents/ Applicants did not raise an objection within 14 days of the said decision. Further, the application is time barred; fatally defective; and the Respondents have not demonstrated any error in principle made by the Taxing Officer. They contend that the Respondents/ Applicants left the taxation to the Taxing Officer and the application is frivolous and vexatious.

The two applications were canvassed through written submissions.

Analysis and Determination

Upon consideration of the two applications, rivaling affidavits, Grounds of Objection and submissions, the following are the issues for determination:

- Whether the decision of the Taxing officer dated 13th January, 2020, on items 3 to 205 and item on interest on the Advocate's Bill of Costs, should be reviewed and or set aside.
- Whether the Advocates' taxed costs at Kshs. 659,203 should be adopted and entered as judgement.

As to whether the decision of the Taxing officer dated 13th January, 2020, on items 3 to 205 and item on interest on the Advocate's Bill of Costs, should be reviewed and or set aside.

The Respondents/ Applicants have sought to set aside the said decision of the Taxing Officer but did not provide any plausible reasons as to why they were seeking the said orders.

I note the Respondents/Applicants filed the instant Chamber Summons after 16 days of the delivery of the Taxing Officer's decision. Clause 11 of the Advocates Remuneration Order stipulates that: '

'(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.'

In the case of Republic v Ministry of Agriculture and 2 others: Exparte Muchiri W'Njuguna & others (2006) eKLR it was held as follows: **"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 inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant facts"**.

In the current scenario, the Respondents/ Applicants never lodged an application seeking to enlarge time to raise an objection in respect to the Taxing Officer's decision dated the 13th January, 2020 as required by the aforementioned Rules. From a perusal of the Taxing Officer's Ruling, I note the Respondents Advocate received it on the 13th January, 2020 but chose not to lodge an objection within time. It is trite that *the Court should not interfere with the decision of a Taxing Officer unless it is based on an error of principle or the fee awarded is manifestly excessive as to justify an inference. In the Respondents'/ Applicants supporting affidavit, except for seeking to set aside the indicated taxed amounts, they failed to demonstrate whether there was an error of principle in the taxing master's decision nor that the fee awarded was manifestly excessive.*

Based on the facts before me while relying on the legal provisions I have cited above as well as associating myself with the quoted decision, I am unable to set aside the said taxed Bill of Costs and will proceed to uphold the determination of the taxing officer as regards the itemized figures and issue of interest. In the circumstance, I find the Respondents' Chamber Summons Application unmerited and will disallow it.

As to whether the Advocates' taxed costs at Kshs. 659,203 should be adopted and entered as judgement. Section 51(2) of the Advocates Act provides that: **'The Certificate of the Taxing Officer by whom any bill has been taxed shall unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgement be entered for the sum certified to be due with costs.'**

In this instance, the Taxing Officer taxed the Advocates' Costs at Kshs. 659, 203 which this Court has upheld. In relying on the legal provisions cited above and based on the circumstances at hand, I do not find any reason why the said amount should not be entered as judgement of the court and will proceed to do so.

It is against the foregoing that I proceed to make the following final Orders:

- The Advocates/ Applicant's Notice of Motion application dated the 23rd January, 2020 be and is hereby allowed.
- The Respondents' Chamber Summons application dated the 29th January, 2020 be and is hereby dismissed with costs
- Judgement be and is hereby entered in favour of Mwaniki Gitau & Company Advocates as against James Ndina Gitonga & Chrispus Mbici Gakui for the sum of Kshs. 659,203 plus interest at 14% from 11th July, 2019 until payment in full.

Dated Signed and Delivered at Kajiado this 10th Day of December, 2020.

CHRISTINE OCHIENG

JUDGE



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