

REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT MERU

CIVIL APPEAL NO.6 OF 2017

KENYA WILDLIFE SERVICES.....APPELLANT

VERSUS

JMM (SUING AS NEXT FRIEND TO DKM –MINOR).....RESPONDENT

RULING

1. The Respondent's bill of costs dated 9th July 2019 was taxed by the Deputy Registrar at Kshs. 64,825 after the Taxing Master taxed off Kshs. 40,000 out of the first item which was instruction fees at Kshs. 90,000, the second item was also taxed off completely.

2. The Respondent was aggrieved and by a letter dated 1st October 2019 wrote to the Deputy Registrar seeking for reasons for taxing the bill at Ksh 64,825 as opposed to Kshs. 141,555 which the Respondent had computed. The said letter was filed on 25th October 2019 when the Respondent's advocate also paid for a copy of the ruling. Subsequently on 6th of November 2019 the Respondent filed chamber summons dated 29th October 2019 seeking that the court varies/sets aside the decision of the Taxing Master delivered on 26th September 2019 in items number 1 and 2 of his bill of costs. The application was supported by the affidavit of Kithome L Mutinda Advocate sworn on 29th October 2019.

3. In the replying affidavit of Manasses Kariuki Karoki Advocate sworn on 3rd of February 2020, the court was urged to dismiss the application for reasons it was bad in law, incompetent and improperly before the court as the procedure adopted is not provided for in law. It was averred that the Applicant did not give notice to the Taxing Master within 14 days of the items he was objecting to and the letter written to the Deputy Registrar dated 1st October 2019 was only served on 25th October 2019 after the bill of costs had been taxed. The Appellants therefore argued that this court does not have jurisdiction to grant the orders sought.

4. Directions were taken that the application be canvassed by way of written submission on points of law. I have considered the applications, the supporting affidavit and the replying affidavit as well as the rival submissions and find that the issue of jurisdiction of this court cannot be canvassed concurrently with the substantive issue as to whether the Respondent's bill of costs was properly taxed. The Appellant ought to have challenged the same through a preliminary objection before delving into the substance of the application by way of written submissions. It is true that the Applicant/Respondent gave notice to the Deputy Registrar as to his objection on 25th of October 2019 long after the lapse of the required 14 days, however I find that no prejudice will be suffered to consider the substance of the bill of costs rather than dwelling on the procedural technicalities.

5. Regarding item number 2 on the bill of costs I find that the Taxing Master rightly taxed it off because the Appeal Court did not certify that the appeal was difficult and the Applicants did not move the court to make such a certificate as to the complexity of the appeal. Schedule 6 Paragraph 3 of the Advocates Remuneration provides as follows:

Fees for getting up an appeal

In any appeal to the High Court in which a respondent appears at the hearing of the appeal and which the court at the conclusion of the hearing has certified that in view of the extent or difficulty of the work required to be done subsequently to the lodging of the appeal the case is a proper one for consideration of a getting up fee, the taxing officer may allow such a fee in addition to the instruction fee and such a fee shall not be less than one-third of the instruction fee.

6. Regarding Instruction fees, the Taxing Master argued that the Applicants appeal does not fall under paragraph 1(b) and proceeded to use his discretion to award Kshs. 50,000 as reasonable. I find this erroneous because it is in paragraph 1(b) that the remuneration order provides specifically for instruction fees where an appeal is presented or opposed where the value of the subject matter can be determined from the pleadings judgement or settlement between the parties. In this case the subject matter is Kshs. 600,000 and the taxing master needed not to use his discretion in determining the instruction fees. The applicable instruction fees in the circumstances is Kshs. 90,000 and should not have been increased or reduced.

7. The bill herein is therefore remitted to the Deputy Registrar for purposes of issuing a certificate of costs that is containing the variations in this ruling. Cost of the application to be borne by the parties.

HON.ANNE ADWERA ONG'INJO

JUDGE

DATED AND DELIVERED AT NAIROBI VIA EMAIL THIS 27TH DAY OF APRIL 2020 DUE TO THE PRESIDENTIAL DIRECTIVES ISSUED ON 15TH MARCH 2020 AND SUBSEQUENTLY ON 7TH APRIL 2020 DUE TO COVID-19 PANDEMIC.

HON.ANNE ADWERA ONG'INJO

JUDGE