



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM; CHERERE-J)

MISC. CIVIL APPLICATION NO. 33 OF 2018

(CONSOLIDATED WITH MISC. CIVIL APPLICATION

NOS. 34 TO 48 OF 2018

BETWEEN

PETER M. KARANJA & COMPANY ADVOCATES...ADVOCATE/RESPONDENT

AND

SUKWINDER SINGH CHATTHE.....1ST APPLICANT/CLIENT

RAGHBIR SINGH CHATTHE.....2ND APPLICANT/CLIENT

CHANNAN SINGH CHATTHE.....3RD APPLICANT/CLIENT

SATWANT SINGH CHATTHE.....4th APPLICANT/CLIENT

RULING

Background

1. **MISC. CIVIL CAUSE NO 33 to 36 of 2018** arise from Kisumu Civil Appeal No. 273 of 2008; **MISC. CIVIL CAUSE NO 37 to 40 OF 2018** from HCCC NO. 164 OF 2003; **MISC. CIVIL CAUSE NO 41 to 44 OF 2018** from Kisumu Civil Appeal No. 179 of 2008 and **MISC. CIVIL CAUSE NO 45 to 48 OF 2018** from Kisumu Civil Appeal No. 180 of 2008. From each of the cases, the Respondent filed separate bills against each of the Applicants and the total of 16 bills of costs were taxed at an aggregate sum of **Kshs. 288,943,896.00**.

2. In each of the 16 files, the Applicants filed chambers summons dated 17th October, 2018 brought under the provisions of Rule 11(2) of the Advocates (Remuneration) the Applicant praying for orders **THAT: -**

1. That this Honourable Court be pleased to set aside the decisions and award of the Deputy Registrar given and made vide a ruling delivered on 31st May, 2018 wherein the advocate/client bill of costs date 09th March, 2019 were taxed at an aggregate sum of Kshs. 288,943,896.00.

2. That upon grant of prayer (1) aforesaid, this Honourable Court be pleased to re-tax the said advocate/client bills or order that they be re-taxed afresh

3. The chambers summonses are premised on the grounds among others that the taxing master did not tax the bill in terms of the Advocates Remuneration Order; taxed 4 different bills in respect of the same suit and appeal and did not give reasons for her decision.

4. All the chambers summonses are supported by an affidavit sworn on 17th June, 2019 by **SUKWINDER SINGH CHATTHE (hereinafter referred to as the 1st Applicant)** in which he reiterates the grounds on the face of the application. Annexed to the affidavit is an authority signed by **RAGHBIR SINGH CHATTHE, CHANNAN SINGH CHATTHE** and **SATWANT SINGH CHATTHE**

(hereinafter referred to as the 2nd, 3rd and 4th Applicants respectively) giving the deponent authority to act on their behalf. Also annexed is a letter dated 07th June, 2019 by which the Applicants were informed by the Deputy Registrar that the reasons for taxation were as per the ruling dated 31st May, 2018.

5. The applications are opposed on the basis of a replying affidavit sworn by the Advocate/Respondent on 24th June, 2019 in which he avers that the Applicants' advocates letter dated 16th January, 2019 to the Deputy Registrar is not an abjection for the reason that it did not itemize the items they were objected to. He asserts that the Applicants did not file the reference within 14 days upon receipt of the Deputy Registrars letter dated 22nd January, 2019 which supersedes the letter dated 07th June, 2019.

Analysis and Determination

6. I have carefully considered the chamber summonses in the light of the affidavits on record and the oral submissions by Mr. Olel advocate for the Applicants/Clients and Mr. Karanja advocate for the Advocate/Respondent and I have identified the following issues for determination:

i. Whether the Reference was filed within the stipulated time

ii. Whether an advocate is entitled to separate fees in respect of every party that he represents in a suit notwithstanding that he acts for them only in a single suit or proceeding.

iii. Whether the Deputy Registrar's ruling delivered on 31st May, 2018 taxing the advocate/client bills of costs dated 09th March, 2018 at an aggregate sum of Kshs. 288,943,896.00 should be set aside

Was the Reference filed within the stipulated time

7. Paragraph 11 of **the Order** which provides for filing of a reference within 14 days after receipt of the reasons for the taxation. Mr. Olel advocate for the Applicants denied receiving the Deputy Registrar's letter dated 22nd January, 2019 and submitted that the reasons were received on 11th June, 2019 by the Deputy Registrar's letter dated 07th June, 2019 informing them that the reasons for taxation were as per the ruling dated 31st May, 2018.

8. There is evidence that the Deputy Registrar's letter dated 22nd January, 2019 to the effect that that the reasons for taxation were as per the ruling dated 31st May, 2018 was received by the Respondent's advocate but it has not demonstrated that the same letter was delivered to the Applicants' advocate.

9. Consequently, I am persuaded that this reference was properly filed within time having been filed within 7 days of receipt by Applicants' advocate of the Deputy Registrar's letter dated 07th June, 2019 informing the Applicants that the reasons for taxation were as per the ruling dated 31st May, 2018

Separate bills of costs against each of the Applicant

10. A court cannot interfere with a taxing officer decision unless the decision is based on an error of principle or the fee awarded is so manifestly excessive as to justify an interference that it was based on an error of principle. (See **Premchand Raichand Ltd & Another Vs Quarry Services of East Africa Ltd & Others (1972) EA 162**).

11. As stated hereinabove, the impugned bills of costs dated 09th March, 2018 arise from **Kisumu Civil Appeal No. 273 of 2008; HCCC NO. 164 OF 2003; Kisumu Civil Appeal No. 179 of 2008** and **Kisumu Civil Appeal No. 180 of 2008**.

12. Rule 62 of the Advocates (Remuneration) Order, 2009 provides as follows;

“Where the same advocate is employed for two or more Plaintiffs or Defendants and separate pleadings are delivered or other proceedings had by or for two or more such Plaintiffs or Defendants separately, the taxing officer shall consider in the taxation of such advocates Bill of Costs, either between party and party or both between advocates and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any party of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.

13. In the case of **Nguruman Limited Vs Kenya Civil Aviation and 3 Others, High Court Petition No. 143 of 2011(2014) eKLR** and **Nyamogo & Nyamogo Advocates HC Misc Civil App. No 138 of 2003 (2006) eKLR** the court held that where separate instructions are given in the same suit, instructions fee may be separate. In the instant case it is not disputed that the Respondent/Advocate was all at once instructed to act for the Applicants. It is not also disputed that the Respondent/Advocate herein as a result, filed one set of pleadings in each case, in respect of the 4 Applicants.

14. In the result, I find that the instructions fees can only be claimed once in respect of each set of proceedings. The Taxing Officer therefore did not properly exercise her discretion under Rule 62 by disallowing the 3 extra bills of costs in respect of each case since they were unnecessary and unjustified.

Whether the bill of costs dated 09th March, 2018 was taxed at an aggregate sum of Kshs. 288,943,896.00 should be set aside

15. Under section 3 of the Administrative Action Act No. 4 of 2015, any person performing a judicial function under the constitution or written law pursuant to section 4 (2) is under a legal duty to give written reasons for any decision reached in the course of a judicial process.

16. The rationale for giving reasons in a judgement or ruling or decision was espoused in the persuasive authority in the case of **Soulemezis Versus Dudley (Holdings) PTY Limited, 1987 10 NS WLR 247, 279 where MC Hugh JA held as follows:**

“The giving of reasons for a judicial decision serves three purposes:

First, it enables the parties to see the extent to which their arguments have been understood and accepted as well as the basis of the Judge’s decision. As Lord Macmillan has pointed, the main purpose of a reasoned judgement is not only to do but seem to do justice. Secondly, the giving of reasons furthers judicial accountability. A requirement that Judges give reasons for the decisions, grounds of decision that can be debated, attacked and defended – serves a vital function in construing the Judiciary’s exercise of power. Thirdly, under the common law system of adjudication, courts not only resolve disputes, they formulate rules for application in future cases.”

17. Further in deciding a similar question, the Learned Judges stated in the case of **Commonwealth Versus Versus Pharmacy guild of Australia 1989 91 ALR 65; 68:**

“The provision of reasons is an important aspect of the tribunal’s overall task. Reasons are required to inform the public and parties with an immediate interest in the outcome of the proceedings of the manner in which the tribunal’s conclusions were arrived at. A purpose of requiring reasons is to enable the question whether legal error has been made by the tribunal to be more readily perceived than otherwise might be the case. But that is not the only important purpose which the furnishing of reasons has. A prime purpose is the disclosure of the tribunal’s reasoning process to the public and the parties. The provision of reasons engenders confidence in the community that the tribunal has gone about its task appropriately and fairly. The statement of bare conclusions without the statement of reasons will always expose the tribunal to the suggestion that it has not given the matter close enough attention or that it has allowed extraneous matters to cloud its consideration. There is yet a further purpose to be served in the giving of reasons. An obligation to give reasons imposes upon the decision-maker an intellectual discipline. The tribunal is required to state publicly what its reasoning process is. This is a sound administrative safeguard tending to ensure that a tribunal such as this properly discharges the important statutory function which it has.”

18. The provisions of paragraph 11(1) (2) of the Advocates Remuneration Order imposes a duty to give reasons on the Deputy Registrar taxing a bill of costs. Applicants’ advocates letter dated 16th January, 2019 to the Deputy Registrar clearly states that the Applicant were aggrieved by the taxation of the bills of costs as a whole and they therefore needed not have enumerated the items they were objecting to.

19. The Deputy Registrar’s letters dated 22nd January, 2019 and 07th June, 2019 stated that the reasons for taxation were as per the ruling dated 31st May, 2018. With due respect, the ruling dated 31st May, 2018 clearly shows that no reason was given for taxation of the 16 bills of costs at taxed at an aggregate sum of Kshs. 288,943,896.00. The casual dismissal of the Applicants’ request for reasons was in my considered view a breach of the legal duty to give written reasons for any decision reached in the course of a judicial process imposed by Article 10 and Article 47 (1) section 4 (2), paragraph 11(1) (2) of the Advocates Remuneration Order and the Taxations herein are for that reason fit for setting aside.

20. From the foregoing analysis, I find merit in the chambers summonses dated 17th October, 2018 and filed on 18th June, 2019 and it is hereby ordered:

1. Bills of costs in MISC. CIVIL APPLICATION NOS. 34 to 36 of 2018; MISC. CIVIL CAUSE NO 38 to 40 OF 2018; MISC. CIVIL CAUSE NO 42 to 44 OF 2018 and MISC. CIVIL CAUSE NO 46 to 48 OF 2018 are hereby struck out

2. The decision and award of the Deputy Registrar given and made vide rulings delivered on 31st May, 2018 in respect of MISC. CIVIL APPLICATION NOS. 33, 37, 41 and 45 are hereby set aside and remitted to the Taxing Master for re-taxation

3. The costs of these applications will abide the outcome of the taxations.

DELIVERED AND SIGNED IN KISUMU ON THIS ~~30TH~~ DAY OF JULY, 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix & Okodoi

For the Applicant/Client -

For the Advocate/Respondent -