



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
CIVIL CASE NO.16 OF 2016

NGATIA & ASSOCIATES ADVOCATES.....PLAINTIFF/APPL

VERSUS

INTERACTIVE GAMING & LOTTERIES LIMITED.....DEFENDANT/RESP

ARISING FROM HIGH COURT CASE NO.281 OF 2011

INTERACTIVE GAMING & LOTTERIES LIMITED.....PLAINTIFF

VERSUS

FLINT EAST AFRICA LIMITED.....1ST DEFENDANT

AIRTEL NETWORKS KENYA LIMITED.....2ND DEFENDANT

RULING

This is a ruling on reference brought by way of chamber summons dated 30th September 2017. It challenges decision by taxing master in respect of item 2 in regard to getting up fees.

Grounds on the face of the application are that the amount awarded in item 2 of the bill of costs is unrecoverable in the circumstances of this case as it was based on an error of principle. That the taxing master awarded kshs 183,000 despite the fact that the case neither proceeded for trial nor was it ever confirmed for hearing during the employment of the respondent. That the case was determined through an interlocutory application long after the respondent ceased acting.

The applicant submitted that the applicant engaged the defendant to represent it in High court case No.281 of 2011 but after filing [leadings the matter was stayed awaiting a related case HCC NO,115 of 2011 and the Advocate ceased acting while the matter was stayed and did prosecute any further. He submitted that when HCC NO.115 of 2011 was determined request for judgment was made by another Advocate. he submitted that getting up fees is not awardable. He cited schedule VII (2) of the ARO which provide that no getting up fees is chargeable until the case has been confirmed for hearing; and further the taxing officer must be satisfied that the case has been prepared for hearing. He submitted that in the present case the suit neither proceeded for hearing nor was it prepared for trial given the order for stay issued. He added that after determination of HCC NO.115 of 2011, the suit was dismissed via a simple application for entry of judgment by a different counsel; that the taxing master erred by equating a list of witnesses with preparation for trial. He submitted that preparation for trial entail holding meetings with

witnesses to prepare them for trial.

Authorities cited include *Ramesh Naran Patel v Attorney General & Another (2012)* where justice Emukule held as follows:-

“the item in the Advocates Remuneration Order-on getting up fee-contemplates involvement by counsel in the preparation of witnesses, witness statements and determination of the matter by viva voce evidence”.

From the ruling delivered by the taxing officer, HCC.No.281 of 2011 did not proceed for hearing. She indicated that it was stayed pending hearing and determination of HCC NO.115 OF 2011.

Schedule 6 (2) (ii) of the Advocates Remuneration Order provided that:

“No fee under this paragraph is chargeable until the case is confirmed for hearing...”

And schedule 6 (2) (iii) as follows:

“In every case which is not heard, the taxing officer must be satisfied that the case has been prepared for trial...”

The taxing master indicated that there was a list of witnesses to be called. There is no indication that the suit was confirmed for hearing nor set down for hearing to warrant preparation of witnesses to testifying Kenya. I agree with the holding in *Kenya Agriculture & Livestock Research Organization vs Njama Limited (2017) eKLR* that no getting up fee is awardable where there is no preparation of witnesses to give viva voce evidence. There is no mention of witness statements also in this case; and even if witnesses’ statements were filed they must have been done at the time of taking instructions and that should adequately be covered under instruction fee. I do not see justification for award of getting up fee in this case. I proceed to allow the applicants objection.

Dated and Delivered at Nairobi this 23rd day of February 2017

.....

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

.....COURT ASSISTANT

.....COUNSEL FOR CLIENT/APPL

.....COUNSEL FOR ADV/ RESPONDENT