

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

MISC. CIVIL APPLICATION NO. 40 OF 2017

SHERMAN NYONGESA & MUTUBIA ADVOCATES.....APPLICANT

VERSUS

PACIS INSURANCE COMPANY LIMITED.....RESPONDENT

R U L I N G

1. There is before court a reference by the advocate against the decision of the taxing officer by which a bill of costs dated 17/2/2017 was on the 14/12/2017 taxed in the sum of Kshs.114,833.20. In that bill there was an item no. 2, being stamp duty in the sum of Kshs.25,918/= which was disallowed and taxed off in whole for reasons that no receipts were presented and exhibited to court.
2. It is that item that is the subject of the reference by which the Advocate/Applicant contends that the taxing officer erred in disallowing the sum being a disbursement for which receipts were duly presented by the supplementary list of document dated 20/7/2017 and filed in court on the 21/7/2017.
3. The application was evidently served, acknowledged and an Affidavit of Service filed but there was never any response filed to it. Even submissions ordered were only filed by the applicant and not the respondent/client. The Applicant was therefore wholly unopposed and could as well pass as such but this court is minded to find out if the taxing officer committed any error in the process and task of taxing the bill.
4. Under paragraph 69 of the Advocate Remuneration Order disbursement are decreed to be shown at the foot of the bill of costs.
5. Here the disbursements were duly claimed as the Rules dictate and documents in support thereof being KRA Pay in Slip No. 2020170001 dated 6/7/2017, Kenya Commercial Bank Customer Transaction Slip TT 171877 R3PW dated 6/7/2017 and Department of Land Revenue receipt no. 4640378 dated 18/7/2017 showing that the stamp duty was indeed paid, were filed in a document headed “**supplementary list of documents**”.
6. Strictly speaking the documents evidencing sums incurred on disbursements should be attached to the bill but that by itself is not fatal provided the same are exhibited. Here I do find that there was evidence of the disbursement by way of stamp duty paid on the lease registration and that the taxing officer awarded the payment of registration in the sum of Kshs.500/= on the basis of a document filed together with payment for stamp duty, which he disallowed, is a clear error on the part of the taxing officer.
7. I do upset the taxing officers decision taxing off that sum and in its place substitute an order allowing the same in the sum of Kshs.22,220/= and not Kshs.25,918/= as claimed. When that sum is added to the sum allowed of Kshs.114,833.32, the sum due to the Advocate/applicant under that bill comes the sum of Kshs.137,053.32. I therefore set aside the sum taxed and in its place substitute a sum of Kshs.137,053.32. Let a certificate of costs be issued in that sum.
8. There is a common mistake committed by advocates when drawing bill of costs and it regards fees to attending before the Deputy Registrar for taxation. For good reason, the Remuneration Order provides that no sum shall be claimed under this item. The rationale is to this court the fact that the taxation may necessitate more than one attendance and therefore it would restricting and inaccurate to claim the sum beforehand. It is left blank so that the taxing officer award a befitting sum depending on the number of attendances and time taken in urging the bill. Paragraph 69(3) of the Remuneration Order, provides:-

“Fees for attending taxation shall not be included in the body of the bill, but the item shall appear at the end, and the amount left blank for completion by the taxing officer”.
9. This observation is made with the hope that a practitioner who may read this ruling will be guided how to make a fair claim for attendance to tax a bill of costs.
10. Lastly, this being an application after taxation, and being on a file for taxation, in which no further bill is anticipated nor desirable, I award the costs of the reference assessed in the sum of Kshs.5,000/= all-inclusive, to the Advocate applicant.
11. It is so ordered.

Dated and delivered at Mombasa on this 18th day of December 2018.

P.J.O. OTIENO

JUDGE