



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. CIVIL APPLICATION NO. 2 OF 2012**

**AND**

**IN THE MATTER OF REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA DISTRICT REGISTRY**

**CIVIL SUIT NO. 278 OF 2006**

**STEPHEN MALEVE.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTNING CO. LTD.....DEFENDANT**

**IN THE MATTER OF TAXATION OF THE COSTS BETWEEN ADVOCATE AND CLIENT  
C.B. GOR & GOR. ADVOCATES INSTRUCTED BY TRIDENT INSURANCE COMPANY  
LIMITED TO ACT FOR THE DEFENDANT**

**BETWEEN**

**C.B. GOR & GOR.....APPLICANT**

**VERSUS**

**TRIDENT INSURANCE CO. LIMITED.....RESPONDENT**

**RULING**

1. On 31<sup>st</sup> October, 2012 the applicant herein filed a reference under the provisions of rule 11 of the Advocates (Remuneration) Order seeking a revision of the amount assessed by the Taxing Officer as the applicant's fees in Mombasa HCCC No. 278 of 2006, Stephen Maleve vs Kenya Power & Lighting Co. Ltd. The application is anchored on the grounds in support of it and the affidavit of Shishir Suryakant Gor (applicant) sworn on 30<sup>th</sup> October, 2012.

2. In opposing the said application, the respondent, Trident Insurance Co. Ltd. which had instructed the applicant to act for the defendant in Mombasa HCCC No. 278 of 2006, filed a replying affidavit on 29<sup>th</sup>

November, 2012.

3. In arguing the application, Mr. Mwaboje, Learned Counsel for the applicant in brief submissions stated that the law firm of P.O. Osino which was acting for the plaintiff in Mombasa HCCC No. 278 of 2006 consented to party costs of Kshs. 250,000/=. Counsel submitted that the Taxing Officer failed to take into account the agreement and failed to tax instruction fees and fees for preparing for trial and attending court at the sum of Kshs. 375,000/= . The applicant's contention was that the agreement was valid and the Taxing Officer ought to have taken the same into consideration.

4. Mr. Wafula, Learned Counsel for the respondent relied on the replying affidavit sworn by Martin Bett sworn on 21st November, 2012 and stated that the applicant had failed to establish that the Taxing Officer erred in principle. He submitted that what was before the Taxing Officer was an Advocate/Client Bill of costs and that no agreement was availed to the Taxing Officer. He argued that party and party costs include filing fees and such fees was not part and parcel of the Advocates fees.

5. Counsel submitted that the value of the subject matter in the primary suit was Kshs.3,518,982.00/= which formed the basis upon which the Taxing Officer acted in computation of the charges applicable. Mr. Wafula relied on the case of **First Assurance Bank of Kenya vs Shah & Others** [2001] EA 64. He prayed for the application to be dismissed.

## **ANALYSIS AND DETERMINATION**

The issue for determination is if this court should interfere with the decision of the Taxing Officer.

6. On 2<sup>nd</sup> March, 2012 when the Bill of Costs came up for taxation before the Taxing Officer, Mr. Gor (the applicant) did indicate that the party and party costs had been agreed at the sum of Kshs. 250,000/= which was duly paid to P.A. Osino & Co. Advocates. Mr. Ochwa Advocate objected to the said party and party costs being considered as having been agreed upon as no consent was filed in court on the same.

7. A perusal of the letter marked as SSG5 attached to the applicant's affidavit shows that a cheque for the sum of Kshs.2,410,549.90 was forwarded to the law firm of P.A. Osino and Co. Advocates on 20<sup>th</sup> April, 2009. The cheque No. 014405 was drawn on 16<sup>th</sup> April, 2009. The said law firm on 20<sup>th</sup> April, 2009 acknowledged receipt of the said letter and cheque by stamping on a copy of the letter bearing the applicant's letter head. In his written submissions, the applicant indicates that the provisions of schedule VI(B)(a) of the Advocates (Remuneration) (Amendment) Order, 2006 is applicable in this application.

8. A perusal of the said schedule shows that if party and party costs are agreed upon, the parties thereto ought to comply with paragraph 57 of the Advocates (Remuneration) Order which provides as follows:-

***“If, after the disposal of any proceedings by the court, the parties thereto agree the amount of costs to be paid in pursuance of the court's order or judgment therein, the parties may in lieu of filing a bill of costs and proceeding to taxation thereof, request the registrar by joint letter to record their agreement and unless he considers the amount agreed upon to be exorbitant the registrar shall do so upon payment of the same court fee as is payable on filing any document for which no special fee is prescribed.*”**

***(2) Such agreement where recorded shall have the same force and effect as a certificate of taxation by the taxing officer:***

***Provided that the taxing officer shall consider the amount so agreed upon to be exorbitant he may direct the said costs to be taxed in accordance with this order and the provisions of rule 11 shall apply in regard to every such taxation.”***

9. The foregoing provisions give parties the leeway to enter into consents as to costs. This however, must be formally recorded by the Deputy Registrar. In the alternative, a party may file a Bill of costs for taxation. The applicant's approach in pursuing his costs ran counter to the provisions of Paragraph 57 of

the Advocates Remuneration Order. He not only filed a Bill of costs for taxation, but at the hearing thereof, he made reference to a consent which had not been placed before the said Registrar for recording.

10. It is therefore apparent that the Hon. Gandani who taxed the Bill of costs did so correctly and cannot be faulted for having held that there was no consent of the parties in regard to party and party costs.

11. Counsel for the respondent relied on the case of **First Assurance Bank of Kenya vs Shah & Others** [2001] EA 64 where Ringera J stated that under the Advocates Remuneration Order, some factors to be considered were the nature and importance of the matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge.

12. In this instance the Taxing Officer ably taxed the Bill of costs and competently responded to the issues raised by the applicant, through her letter dated 26th October, 2012. It is my finding that she did not misdirect herself or act on wrong principles when taxing the applicant's Bill of costs.

13. I therefore find that the reference filed herein is without merit. It is dismissed with costs to the respondent.

**DELIVERED, DATED and SIGNED at MOMBASA on this 13th day of October, 2017.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Mrs. Nyange holding brief Mr. C.B. Gor for the applicant

Mr. Wafula for the respondent

Mr. Oliver Musundi - Court Assistant