



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE NO. 47 OF 2011

CHARLES LUTTA KASAMANI T/A KASAMANI & CO. ADVOCATES.....PLAINTIFF

VERSUS

PATRICK JOHNSON OKWARO.....1ST DEFENDANT

GEOFFREY DENIS OLUOCH T/A OTIENO YOGO &

CO. ADVOCATES.....2ND DEFENDANT

R U L I N G

The preliminary objection dated 8-9-2014 by the defendant is premised on the following grounds:

- 1. Can the plaintiff being an advocate who represented himself at the trial court earn instruction fees as well as legal fees or is he only entitled to actual disbursement?**

Mr. Otiemo Advocate argued simply that since the plaintiff despite being an advocate acted for himself in the entire process of litigation herein he should not be heard to ask for costs as though he acted as a lawyer. He further argued that as a party he is only entitled to the costs which ordinarily does not of necessity become payable to an advocate for instance disbursement.

He backed up his argument by the authority of **AG -VS- Theuri [1985] KLR 157.**

The respondent/plaintiff argued otherwise. He said that the undertaking given here by the defendant was given to him as a party and not an advocate and that he acted for himself and was entitled to the relevant costs as an advocate.

It is not disputed that under the Remuneration order a party who instructs an advocate must be granted costs based on the fact that he hired one. But the case at hand is unique because the plaintiff though an advocate himself acted on his own. The undertaking was of course given to him as a vendor and not an advocate.

But to unravel this, one has to determine who is a party to the suit. Black Law Dictionary 8th Edition defines a party as:

- 1. “ One who takes part in a transaction.**
- 2. One by or against whom a lawsuit is brought”.**

In this case the plaintiff was a party to the proceedings. He did not hire an advocate to represent him. If he had hired an advocate then he would have been entitled to costs. In terms of instruction fees payable to

the advocate, I find that having chosen to act in person, there was no distinction between him and any other ordinary litigant who chose not to hire counsel. My understanding is that the spirit of the Remuneration order was to reward a party who has expended resources in hiring an advocate by being reimbursed, so to speak, what he has spent.

However, when a party takes it upon himself to file or defend a suit then he cannot in my humble view ask for costs except the usual disbursement which he expended but not instruction fees. In essence he has not retain anybody to represent him. He is representing himself and any effort he has expended on the case inform of research and the usual trouble of going through in litigation has been done by himself.

In the premises I do allow the preliminary objection and order that the plaintiff is only entitled to such costs and disbursement that he has incurred not instruction fees. Costs of this objection to the defendant.

Dated, signed and delivered at Kisumu this 19th day of January, 2015.

**H.K.
JUDGE**

CHEMITEI