



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION 409 OF 2006

MAINA KAMAU.....1ST APPLICANT

CHARLES KIYO MURATHA.....2ND APPLICANT

KAVEMBA RICHARD MUTINDA.....3RD APPLICANT

BETHWEL OMONDI OKAL.....4TH APPLICANT

GEOFFREY MAJIWA.....5TH APPLICANT

JAMES OUGO OPETE.....6TH APPLICANT

WASONGA MAURICE LENDI.....7TH APPLICANT

VERSUS

JOHN GAKUO.....1ST RESPONDENT

THE CITY COUNCIL OF NAIROBI.....2ND RESPONDENT

DICK WATHIKA.....3RD RESPONDENT

FERDINAND WAITITU.....4TH RESPONDENT

RULING

What is before the court is a reference to the High Court from the decision of the taxing officer made on 2nd July 2010 taxing the 1st and 2nd Respondent’s Bill of Costs at Kshs. 552,734.00. The application is brought by way of Chamber Summons dated 10th August 2010. The summons were brought under paragraph 11 (1), 11(2) Advocates (Remuneration) Order for orders that :-

1. The ruling made by the taxing officer herein on the 2nd of July 2010 taxing the 1st and 2nd respondent bill of cost at Kshs. 552, 734.00 to be set aside.
2. That the 1st and 2nd respondent bill of cost dated the 28th October 2009 be referred back to the taxing officer for re-taxation and

3. The cost of this application be provided.

The application is supported by the supporting affidavit of MAINA KAMAU sworn on the 10th day of August 2010. The Application is brought on the grounds that:

1. The taxing officer erred in law by failing to appreciate the provisions of paragraph 69 of the advocates (Remuneration) Order as regards to the manner of preparing a bill of costs.
2. The taxing officer erred in law and in fact by allowing the amounts in respect of the disputed items.
3. The taxing officer erred in law and in fact by failing to give a specific statement of the authorizing clause in law or a particularized justification of the mode of exercising any discretion provided for in allowing the amounts in respect of the disputed items
4. The taxing officer acted outside the scope of the well settled guiding principles in awarding of instructing fees in judicial review matters;
5. The taxing officer failed to appreciate the 1st Applicant's written submissions
6. The party and party costs ought to be a fair remuneration of expenses incurred and not a means of enrichment.

The Application is opposed by counsel for the 1st and 2nd Respondent on various grounds, among them that the application lacks merit and substance, the 1st Applicant has not complied with a court order that he deposits the taxed amount in court within seven days from 18th November 2010 and therefore does not deserve the courts assistance, and that the Applicants have not demonstrated to the court that they will suffer irreparable loss if the amount as taxed is paid.

This application arises out of a judicial review application that had been filed by the Applicants on 4th December 2006 in which they sought various orders. The substantive application was overtaken by events and the applicants filed a subsequent application on 27th July 2009 seeking to withdraw the substantive application for judicial review. The suit was withdrawn on 13th October 2009 with costs to the Respondents. The 1st and Respondents filed a Bill of Costs on 4th November 2009 seeking 2,500,000.00 as instruction fees. The same was taxed at Kshs. 500,000.00.

The Applicants find the figure allowed by the taxing matter high and are of the view that the taxing officer grossly misdirected himself by increasing the basic instruction fee which is allowed by the Advocates Remuneration Order to Kshs. 500,000.00.

The issue for determination is whether the taxing officer exercised his discretion in a judicious manner, and whether the amount allowed as instruction fees was too high bearing in mind the circumstances of this matter.

I have had occasion to peruse the pleadings, submissions and authorities of counsel. I have noted that the taxing officer exercised his discretion in enhancing the instruction fees provided in the Advocates Remuneration Order 1997, from the basic figure of 30,000.00 to Kshs 500,000.00.

The basic principle for taxation matters is set out in the **Premchand Raichand Ltd & Another versus Quarry Services East Africa Ltd (1972) EA 162**. In the words of **Spry, VP**;

“the taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience merely because it thinks the award somewhat to high or too low: it will only interfere if it thinks that the award is too high or too low as to amount to an injustice to one party or the other”

I have looked at the ruling annexed to the pleadings of the Applicants. I note that the taxing officer gave his reason for taxing the instruction fees at Kshs 500,000.00: that this matter touched on public law. I believe that the taxing officer has the requisite understanding required in taxation matters. This court can only interfere with the award made by the taxing officer where the same is very high or very low as to occasion an injustice on the parties. I also note that this matter was withdrawn by the applicant before it could be determined, since the same was overtaken by events. In my view it would be unfair to the Applicants to allow the high amount of Kshs. 500,000.00 as instruction fees. After all, instruction fees are to be based on professional work done by counsel. I think an instruction fee of Kshs. 200,000.00 would be sufficient.

For this reason I allow the application dated 10th August 2010 to extent that that the amount of Kshs. 500,000.00 awarded as instructions fees is set aside and substituted with the figure of Kshs. 200,000.00, each party to bear own costs.

Dated and Delivered at Nairobi this 20th day of July 2012

M. WARSAME

JUDGE