



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Application 392 of 2010

JOHN OKUKU ODWORA.....1ST CLAIMANT /RESPONDENT

WILFRED NJERU.....2ND CLAIMANT/RESPONDENT

VS.

MADISON INSURANCE COMPANY LIMITED.....1ST RESPONENT /APPLICANT

SAMUEL GITHIA NGARUIYA, JAMES MWANGI,

WAINAINA AND JOSEPH MUNENE MURAGE

SUING AS TRUSTEES OF MADISON

INSURANCE COMPANY KENYA LIMITED

STAFF BENEFITS SCHEME.....2ND RESPONDENT/APPLICANT

RULING

1. Before me is a Chamber Summons application brought by the Respondents/Applicants under Section 11(2) of the Advocates (Remuneration) Order, 2009. The application seeks orders that the Taxing Officers decision contained in the ruling delivered on 4th March 2011 be set aside as it relates to the reasoning and determination pertaining to taxation of items 1-67 of the Applicant's Bill of Costs dated 27th September 2010. The application further prays that this Court do re-assess the fees due to the Applicants in respected of the aforestated items in the Bill of Costs. In the alternative, the Applicants pray that this court do remit the Applicant's Bill of Costs dated 27th September 2010 for review and re-taxation by a different taxing officer.
2. The application is based on grounds set out on the face of the application and is further supported by the affidavit of Robert Githaiga sworn on 29th February 2012.
3. Essentially, the Applicants contend that the taxing officer misdirected himself by failing to distinguish between costs in ordinary litigation matters and costs applicable on a full indemnity basis in arbitration matters; failed to give regard to the Remuneration Charges prescribed by the Chartered Institute of Arbitrators under whose Rules the arbitration was conducted; and the taxing officer failed to give due regard to the professional standing and expertise of counsel acting in the matter according to the Remuneration Charges prescribed by the Chartered Institute of Arbitrators under whose rules the arbitration was conducted. The Applicants further fault the taxing officer for failing to give regard to the

complexity of the matter, nature and importance of the matters, the industry and time put in the matter, the interests of the parties and the conduct of the proceedings.

4. The Respondents did not oppose the application, in spite of being granted numerous opportunities through adjournments to do so. The application is therefore unopposed.
5. Counsel for the Applicants filed detailed submissions to buttress the case of the Applicants in relation to the application.
6. I have carefully considered the application, the affidavit in support and the submissions by counsel for the Applicants.
7. In the absence of any controverting evidence and arguments, I am satisfied that the Applicant has made a proper case for challenging the taxation in this matter.
8. I am therefore inclined to grant the Chamber Summons application in terms of prayers 1 and 3 of the application with costs to the Applicants.
9. The Bill of Costs may be re-listed before a different taxing master of this court for taxation afresh at the convenience of the parties.

IT IS SO ORDERED.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 15TH DAY OF NOVEMBER 2012.

J.M. MUTAVA

JUDGE