



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

MISC. CAUSE NO. 3 OF 2010

HAMZAALI JIWAJI.....APPLICANT

-VERSUS-

THE LAMU DREAMS LIMITED.....RESPONDENT

RULING

This is a Preliminary Objection raised by the respondent`s advocate Mr Odera, with regard to the taxation of the applicant`s bill of costs in respect of work done by the applicant as advocate for the second defendant in the High Court on instructions received by the applicant relating to;-

- (a) Party and Party bill of costs HCC No. 24 of 2007
- (b) Advocate and Client Bill of Costs relating to HCCC No. 24 of 2007

The Preliminary objection is on grounds that;-

1. The advocates on record for the defendants in HCCC No.24 of 2007 are TIMAMMY AND CO. ADV, so HAMZAALI JIWAJI, advocate who is currently not on record for the defendants, cannot therefore lodge or tax a bill of cots.
2. The bill of costs of Hamzaali Jiwaji Advocate, can only be annexed to that of Timamy & Co. Advocate who are the current advocates for Defendants and it`s total shown as a disbursement.
3. The filing of the said bill of costs by Hamzaali Jiwaji, is contrary to law and the Bill should be dismissed.

At the hearing of this Preliminary objection Mr Odera submitted that Rule 62A (1-3) of the Advocate. Remuneration Order should guide this court and its provisions are very clear – if there has been a change of advocate in a matter, the advocate finely on record draws a single bill for the whole matter – in this case it would be Timmamy Advocate to do so. He cites the decision in **Bhatt V Ajeet Singh (1962) EA 103 at 105 paragraphs D to F** to support his position.

This is opposed by Mr Mouko who submits that the provision of the law is seriously misinterpreted by the applicants and that the case of **BHATT** can easily be distinguished from the current situation because BHATT`S case invoked Party to Party costs while Respondent`s on appeal were awarded costs and that Court of Appeal stated that the best approach was that the last advocate on record draws his bill for whatever work he had done, not what the previous advocate had done and that what the previous advocate

had done would be brought as a bill of costs presented to the last advocate. He referred this court to **paragraph 4 of Sir Alistair Forbes decision at page 104** which has to the effect that what Mr Odera proposes and relies on, was a general principle as stated by Sir Newham and the relevant passage by Sir Newham was this;-

“A bill of costs is a factual statement of services rendered and disbursements made, and, if any of the facts alleged in the bill are shown to be untrue.....the bill is taxed off. The commonest example of this in England is probably the inclusion in the bill of counsel`s fees which had not been paid when the bill was presented.....

Paragraph E appears to be the relevant principle as set out by Sir Newham that;-

“If the solicitors have been changed during the proceedings, the bill of the first solicitor may be annexed to that of the current solicitor and it is shown as a disbursement. It may be shown as “by anticipation” if unpaid. It will be taxed in the ordinary way, the current solicitor being heard on it. If evidence is required, the first solicitor may be called.”

According to Mr Mouko, the firm of Timmamy took over the matter from Mr Jiwaji whose services were terminated and all that Mr Jiwaji is telling the client is “pay me what I have rendered to you” and that Mr Jiwaji is now an adverse party, so how can Mr Timamy be trusted to draw a bill favourable to him and agents and his client.

The guiding provision is found in Cap 16 subsidiary legislation that is Advocate Remuneration Order at section 62A (1).

“Where there has been a change of advocates or more than one change of advocate the advocate finally on record shall draw a SINGLE bill for the whole of the matter in respect of which costs have been awarded”

“3 The bill shall be accompanied by a certificate setting out the dates during which all advocates acted together with all agreements for remuneration made with them, all sums paid to them for costs and whether those sums were paid in full settlement”

The language used in that provision is unambiguous and does not require any further interpretation or analysis. The fears expressed by Mr Mouko that Timamy may eventually not draw a bill favourable to Mr Jiwaji is taken care of by provision of section 62 A (3).

I think the intention of this provision is to avoid a situation where a litigant ends up perpetually attending court to participate in taxation of a bill relating to one cause of action where there has been change of advocate as that becomes burdensome and vexing. My finding then is that the Preliminary objection has merit and is sustained. The bill as filed is thus dismissed.

Dated and Delivered on 17th May 2011 at Malindi.

H A OMONDI

JUDGE

17/05/11

Mr. Mouko for applicant

Miss Jadi holding brief for Odera for Respondent