



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KISUMU

MISC. CIVIL APPL. NO. 65 OF 2008

PATRICK J. O. OTIENO &
GEOFFREY O. YOGO APPLICANTS
VERSUS

KISUMU WATER SEWERAGE &
CO. LTD RESPONDENT

RULING

The application before me is a Chamber Summons dated 8th December, 2010 brought pursuant to Rule 11(1) & (2) of the Advocate (Remuneration) Order & S. 3A of the Civil Procedure Act. The application sought for several prayers some already spent. Relevant to this ruling are prayers 3, 4 & 5 of the application as follows:-

- 3. That the award of the Taxing Master made on 1.11.2010 in respect to various items as set out in the application be varied and set aside.**
- 4. The court do retax or remit back to a different taxing officer the said bills for taxation, assessment and/or awards.**
- 5. Costs of the application.**

The application is supported by the affidavit of **David Onyango** dated 8th December, 2010 and on the grounds on the face of the application. The grounds being that the taxing officer erred in law in giving a global figure in each of the bills of costs without taxing each item in the respective bills; the taxing officer exercised his taxation wrongly thus awarding sums that were excessive and that the taxing officer failed to take into account sums already paid requiring parties to take accounts; the applicant listed 34 bills of costs.

The respondent's Advocate objected to the application by filing grounds of opposition dated 23rd March, 2011 and 10th May, 2011. The respondent contended that the application is misconceived, bad in-law and untenable and there is no decree to necessitate stay of execution.

I have considered the application before me, the submissions by Counsel and authority cited. The issues for consideration are; whether the taxing officer erred in failing to consider item by item in the various bills and if the awards were excessive.

The facts of the case are that the Advocates/Respondent filed various bills arising from matters where the Advocates represented the client/applicant – 34 in number. A ruling giving the sum of Kshs 1,514,759.52 as taxed costs was delivered on 1st of November, 2010 and a certificate of costs issued on the same day, an application dated 3rd November, 2010 was filed seeking to have the certificate of costs converted into decree and judgment of court was filed.

By a letter of 12th November, 2010 the client's advocate sought for reasons and by a response dated 24th November, 2010 the Deputy Registrar informed the client that the reasons are contained in the ruling of 1st November, 2011.

From the record and consideration of the Deputy Registrar's ruling, it is clear that he gave a global figure for each of bills without considering item by item in the bills. The Deputy Registrar did not indicate how he arrived at the figures. In the

absence of details of taxation item by item it may just as well be that the sums awarded are in excess or though it may also be argued to the contrary.

However it is clear that there is an apparent error of principle on the part of the taxing officer, the remuneration Order and the Argument thereof of stances rendered be itemized envisages that the taxing officer will consider item by item and indicate so in his ruling. This is not the case herein.

Having stated as above, however it is clear from the ruling of the taxing officer that he took account of the sums paid out by the client to the advocate in his ruling as he reduced the same amount. That as it may this court must interfere for the mere fact that the taxation fell short of the requirements of the Remuneration Order.

In this regard the taxation made on 1st November, 2010 and all other consequential orders are set aside.

The bills are remitted for taxation before a different taxing officer.

Costs go to the applicant.

DATED AND DELIVERED THIS 4TH DAY OF AUGUST, 2011.

**ALI-ARONI
JUDGE**

In the presence of:

----- for Applicant(s)

----- for Respondent(s)

AA/hao