



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. 907 OF 2009

MURIITHI WANJAU & CAESER NGIGE WANJAU

t/a WANJAU & WANJAU, ADVOCATES APPLICANTS

VERSUS

TELKOM KENYA LTD. RESPONDENT

RULING

This application is brought by a Chamber Summons dated 6th July, 2010 and taken out under **Rule 11** of the **Advocates (Remuneration) Order, Sections 3 and 3A** of the **Civil Procedure Act**, and all other enabling provisions of the law. The Applicant, Telkom Kenya Ltd., thereby applies for orders that –

- 1. The decision of the taxing officer awarding the sum of Kshs.18,420,886.62 as instruction fee, and taxing items 1-85 (both inclusive) under The Advocates (Remuneration) (Amendment) Order, 2006, in taxation of the Bill of Costs dated 23.10.2009, be set aside.***
- 2. This Court do proceed to tax the Bill of Costs dated 23.10.2009 to make an award as is just and permissible in law.***
- 3. Costs of, and incidental to, this application be provided for.***

The application is supported by the annexed affidavit of Lucy Barno,

an Advocate of this Court and a Senior Legal Officer of Telkom Kenya Ltd., and is based on some 11 grounds the most important of which are that –

(a) The taxing officer made a grave error in principle and abused his discretion by proceeding to tax the Bill of Costs dated 23.10.2009, which was drawn under The Advocates (Remuneration) (Amendment) Order, 2006, after finding that The Advocates (Remuneration) (Amendment) Order, 1997 was governing in respect of instruction fee as the Bill of Costs from which it arose was filed in 2005.

(b) The taxing officer committed a grave error of principle by failing to apply the formula for assessing the instruction fee specified in paragraph 1 (1) Schedule VI of the Advocates (Remuneration) (Amendment) Order, 1997 as the matter arose from the defence of a proceeding for taxation of costs.

(c) *The taxing officer committed a grave error of principle by failing to give due consideration to all relevant circumstances of the proceeding for taxation of costs, particularly the matters specified in proviso (i) of Schedule VI of The Advocates (Remuneration) (Amendment) Order, 1997.*

(d) *The taxing officer committed a grave error of principle by over-emphasising the interest of the parties and importance of the matter on the ground that “the amount involved was well in excess of one billion Kenya Shillings.*

To this application, the Respondent raised the following statement of

grounds of Preliminary Objection, to wit –

(i) *The Advocate-Client Bill of Costs dated 23.10.2009, is ex facie incompetent, and fatally defective, for being wrongfully prepared or brought under Schedule VI of the Advocates (Remuneration) (Amendment) Order, 2006, and ought to be struck out with costs.*

(ii) *The Advocate-Client Bill of Costs dated 23.10.2009, is not derived from a suit or proceedings for recovery of costs under the provisions of the Advocates Act, Cap.16, and ought to be struck out with costs.*

With the leave of the Court, the parties filed their respective skeleton

submissions which they highlighted before the Court. Upon considering the pleadings and the said rival submissions, I find that the Taxing Officer addressed his mind to the proper scale to be applied in the taxation of this matter. After the introduction to his ruling, and in his own words, he expressed himself thus -

“What then is the applicable scale? The Bill was filed in the year 2005. In my considered view paragraph 1 (d) of the Advocates (Remuneration)(sic) of 1997 Schedule VI applies and I quote –

‘To defend any other proceedings an instruction fee calculated under sub-paragraph 1 (b).’”

From this point he continued to work out the instruction fees and the figures which he used were clearly based on Schedule VI of the Advocates (Remuneration) Order, 1997. In exercise of his discretion as conferred by paragraph 1 of said Schedule, he duly increased the basic fees by Kshs.3 million. He then proceeded to tax items 2-85 of the Bill which, in his observation, **“were not contested as seen from the submissions by the Respondent.”** In the context of that statement, it ill behoves the Applicant to state at this stage that items 2-85 were drawn under the Advocates (Remuneration) Order, 2006 instead of the Advocates (Remuneration) Order, 1997. If that issue was not contested before the Taxing Officer as the said officer clearly states in his ruling, then it ought not to be raised at this stage for the first time since a Judge of the High Court is not a fit and suitable Tribunal to decide questions of quantum on taxation of costs.

Finally, after considering the requirements for the Advocate and Client costs and increasing the basic fee by one half, the Taxing Officer came up with a final figure by way of the taxed costs.

From the above observations, it seems to me that the Taxing Officer obeyed the law to the letter and never put a foot wrong. In the circumstances, I don’t think that there is any merit in this application and the same is hereby dismissed with costs to the Respondents.

Orders accordingly.

DATED at **NAIROBI** this 17th day of October, 2011.

L. NJAGI

JUDGE

READ and DELIVERED at NAIROBI this 17th day of October, 2011

D. MUSINGA
JUDGE