



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Miscellaneous 506 of 2005

MBUGUA & MBUGUA ADVOCATES PLAINTIFF

VERSUS

KENINDIA ASSURANCE CO. LTD DEFENDANT

RULING

Coram: Mwera J

Mbugua for Applicant

Omwenga for Respondent

This reference by way of Chamber Summons dated 20.11.09 which was brought under paragraphs 11 (2), 79 of the Advocates (Remuneration) Order 1997 had two main prayers:

- 1) That the taxation of 9.12.2008 be set aside in its entirety; and
- 2) This court do adjust figures and reassess fees due to the applicant OR remit the exercise to another Taxing Officer.

There were grounds in the summons and as per Mr Mbugua's supporting affidavit whose import features presently. In dispute were Items 1, 66 and 67 of the bill of costs dated 13.4.05 Mr Omwenga opposed the reference. After the court had directed that any arithmetical/clerical errors as to figures etc in the taxed bill, may as well be corrected on the same being pointed out by counsel to the taxing officer, Mr Mbugua did concede that Item 1 was properly taxed at sh. 150/= and so he could move on to the other items – no. 66, 67. The two were actually interrelated.

The court heard that under Item 66 it had been shown by a certificate of costs that in the primary suit HCCC 669/00 the party – to – party costs there stood at sh. 346,530. And so when it came to the advocate – client taxation now under review, the taxing officer under SCHEDULE VI A, B, should have taken half of the taxed sum in HCCC 669/00 and added it to that very sum to arrive at the proper advocate – client costs .

That the taxing officer had instead disregarded that course, even with the certificate of costs in HCCC 669/00 before him and based the same by taxing sh. 1.1m – the award in HCCC 669/00. He attached a fee of sh. 70,000/= to it, took half of that and added the two figures to arrive at what he thought represented costs in this cause. As to the course to be adopted in a case of the type here the authority of Kipkorir, Titoo & Kiara Advvs Vs Deposit Protection Fund Board [2005] 1 KR 528 was cited.

Mr Omwenga opposed the application on the ground that the bill of costs in issue did not refer to a certificate of costs for sh. 346,530/= (Item 66) as arising from party-to-party costs in HCCC 669/00. It referred to.

“ 66. Taxed as between client and advocate in the said suit no HCCC 669 of 2000.” (underlining added.).

That by that Mr. Mbugua had misled the Taxing Officer and he should not complain about that here, if that officer fell back on sh. 1,201,125/= award in HCCC 669/00 to conclude his exercise. That accordingly the applicant had not demonstrated that the Taxing Officer had erred on a principle to warrant disturbing the taxation done within the wide discretion allowed him in such proceedings.

After hearing counsel, perusing the material placed before court plus the reasons given by the taxing officer, it is minded to find that even if a taxing officer's decision should only be interfered with only if it is demonstrated that he erred in principle to decide as he did, this taxation warrants to be disturbed on the main ground that in applying SCHEDULE VI A, B, the taxing officer was only bound to take the taxed party-to-party costs in HCCC 669/00 as the starting point. Then add half or 50% of that sum to arrive at the costs the applicant was entitled to. That is the understanding and application of SCHEDULE VI, A, B of Remuneration Order which Judges of the court of Appeal expounded thus:

“ This was a taxation of advocates and clients costs. The formula for taxation of those costs is provided in schedule VI A and VI B of the order. According to the formula, the advocates/clients costs in this case would be the party and party costs prescribed in schedule VI A increased by one half.”

The Court went on to state that if a taxing officer fails to apply the formula for assessing instructions fees or fails to give consideration to all relevant circumstances of the case particularly matters in the proviso to that schedule V, A (1), that would constitute an error in principle.

Mr Mbugua no doubt misled the Taxing Officer by describing in Item 66 the sum of sh 346,530/= as having been taxed between client and advocate. The correct position was that that was a party-to-party taxation as the certificate exhibited here shows and Mr. Omwenga does not dispute it. The sum for party-to-party costs in HCCC 660/00. It was not also disputed that Mr Mbugua did exhibit that certificate before the taxing officer.

All in all this court finds that the taxed costs in issue here be and are set aside. A fresh taxation to go on before a different Taxing

Officer as per the regime of law and practice under SCHEDULE VI A, B Advocates (Remuneration) Order 1997. Any figures that require correction to be attended to at the anticipated proceeding.

In the circumstances of this case the reference is allowed with costs to the respondent.

Orders delivered on 18/2/10.

J. W. MWERA

JUDGE