



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Miscellaneous 699 of 2007

MURIU, MUNGAI & CO. ADVOCATES.....ADVOCATES/APPLICANT

VERSUS

NEW KENYA CO-OPERATIVE CREAMERIES LIMITED.....CLIENT/RESPONENT

RULING

1. The parties in this matter agreed by consent that the ruling of this court in respect of **H.C.C. MISC. APPL. 290 OF 2007** on the issue of whether there was an agreement between the parties should abide in this application. In that application I have made a finding that there was no agreement between the advocate and the client as envisaged by the provisions of **Section 45(1) of the Advocates Act**. However I found that as regards the taxation and the entire decision of the taxing master it represented an error in principle.
2. The application in this matter is almost on all fours with the application in **Misc. application No. 290 of 2007**. It seeks for orders that the decision of the Taxing Master delivered on 11th February 2008 as far as it relates to the taxation of the entire bill of costs be set aside. The facts of this matter are also similar to **Misc. Appl. No. 290 of 2007**.
3. Briefly stated the Government of Kenya set up to acquire Kenya Co-operative Creameries from private hands and an agreement was entered into between the Government of Kenya and KCC dated 16th November 2004 for a consideration of Ksh.547,000,000/-. The advocates were instructed to carry out the work of taking over the assets of KCC and vest them upon the Government of Kenya which incorporated another entity called the New KCC.
4. The letter by the advocates dated 17th February 2005 confirmed the instructions were to act for the client and their fees for the entire work was supposed to be 11 million but the client was supposed to bear the costs of disbursements and taxes. This letter was accompanied by a fee not drawn by the same advocate dated 16th February 2004 indicating their fees would be 11 million with VAT all amounting to 12,760,000/-.
5. In my ruling in **MISC CAUSE NO. 290 of 2007** I made a finding that there was no agreement in respect of the fees payable to the advocates. However I held that the taxing officer erred in principle when assessing the bill of costs for failing to appreciate the following elements which includes the determination of:
 - i). The nature and importance of the matter.

- ii) The amount of the value of the subject matter involved.
 - iii) The interest of the parties and the general conduct of the proceedings including the time taken to complete the instructions.
6. I found that the primary document which ought to have guided the court in arriving at instructions fees and all other fees payable to the advocate was the agreement entered into between the KCC and the Government of Kenya. I further found the instructions were given to the advocates to carry out a block exercise of taking over the assets and vesting them to the client. The advocate was therefore supposed to file one bill of costs and the instructions fees was to be based on the value of the agreement and all the work which was done by the advocates was supposed to be itemized within that bill.
7. Finally I found that the taxing master was in error for relying on the valuation report by **Tyson's Ltd** which had nothing to do with instructions given to the advocates and for not taking into consideration the agreement between the GOK and KCC which was the basis of the instructions. For those same reasons I find this bill of costs was also taxed in error and it is hereby dismissed with costs to the client.

RULING READ AND SINGED ON 26TH MARCH 2010 AT NAIROBI.

M.K. KOOME
JUDGE