



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Application 40 of 2006

PETER NJUGUNA NJOROGE.....APPLICANT

VERSUS

JULIUS NARANKLAK OLOLGOLIMOT.....RESPONDENT

COSTS – Taxation – Reference to Judge – upsetting decision of taxing officer – necessity to give notice to other party – in a taxation – Advocates (Remuneration) Order rule 72.

RULING

This Ruling relates to an application by way of a Chamber Summons dated 31st January 2006. It is brought under **rule 11(2)** of the **Advocates (Remuneration) Order**.

The Applicant was the Defendant in Narok SRM Court Civil Case No. 28 of 2003 which the Plaintiff won and the Defendant was condemned to pay costs. The Plaintiff's counsel drew a Bill of Costs dated 21st December 2005 and had it taxed as if it were a matter which arose out of the High Court. The Applicant did not attend the taxation nor was he notified of the date of such taxation. He only received a demand letter from the Plaintiff's Advocate for a sum of Shs 141,550/= which he thinks is excessive. He has therefore come to this court and seeks orders that the taxation be set aside and the Plaintiff's bill be assessed or taxed afresh.

The Applicant says both in the grounds, and in supporting affidavit that he was never informed of the Bill of Costs and that the same was taxed in his absence. This was the major ground relied upon by Mr. Karanja Mbugua when he argued the Application before me on 4th February 2010. He also argued that this was not a High Court matter of which either the Party and Party or Advocates/Client Bill may be drawn and taxed. Costs in the lower court are usually assessed by presiding Magistrate at the written request of the party or parties. He relied upon the decision of my sister Lady Justice Lesiit in the case of **Robert Njane Kamau vs. Laban Mwangi Mugo Nakuru HC Misc. Civil Application No. 103 of 2001**.

It is indeed correct that costs in subordinate courts are assessed by the court at the request of successful party usually. The basis of this practice is **Order XX rule 8 (1) & (2)**. It provides-

“8.(1) Where the amount of costs has been –

- (a) agreed between the parties; or**
- (b) fixed by the judge or magistrate before the decree is drawn; or**
- (c) certified by the registrar under paragraph 68A of the Advocates (Remuneration) Order; or**
- (d) taxed by the court,**

the amount of costs may be stated in the decree or order.

- (2) In all other cases, and where the costs have not in fact been stated in the decree or order in accordance with**

subrule (1), after the amount of the costs has been taxed or otherwise ascertained, it shall be stated in a separate certificate to be signed by the taxing officer, or, in a subordinate court, by the magistrate.”

Rule 2 of the Advocates (Remuneration) Order applies to the remuneration of an advocate of the High Court by his client in contentious and non-contentious matters, the taxation thereof and the taxation of costs as between party and party in contentious matters in the High Court, in subordinate courts (*other than Muslim courts*), in a Tribunal appointed under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act and in a Tribunal established under the Rent Restriction Act.

The ascertainment of costs in contentious matters done in subordinate court is governed by **rule 51** of the **Advocates (Remuneration) Order** which provides-

“Subject to paragraph 22, the scale of costs applicable to proceedings in subordinate courts (other than Kadhi’s Courts) is that set out in Schedule VII.”

Schedule VII covers costs of proceedings in subordinate courts. These are Party and Party Costs, in proceedings in all suit before those courts, including suits for dissolution of marriage, nullity, judicial separation or restitution of conjugal rights, ancillary reliefs and attendances, costs of adjournments etc.

As observed in **Order XX rules 8 (2)** the costs will be ascertained in the manner provided under **rule 8(1)** or as attained under **8(2)** of that Order. The ascertainment or assessment of those costs is not a matter of discretion. It is provided for in **Schedule VII** of the **Advocates (Remuneration) Order**. I have examined the Plaintiff’s Bill (Bill of Costs) drawn on 21st December 2005 and it substantially conforms to the requirements of **Schedule VII** of the **Advocates (Remuneration) Order**. Perhaps the only arguable departure is that it is termed a Bill of Costs it might otherwise have been called the Plaintiff’s or Defendant’s Costs and set out in conformity with the requirements of **Schedule VII** of the **Advocates Remuneration Order**.

I do not therefore propose to strike out the Plaintiff’s Bill of Costs. I direct however that because it was not assessed or ascertained in the presence of the Plaintiff the same is remitted to the SRM Narok for assessment in the presence of the Plaintiff or his counsel and the Defendant or his counsel.

To this extent the Applicant’s Chamber Summons succeeds with no orders to costs as I think the only error on the plaintiff’s part was to have the bill taxed ex-parte.

These are the orders of the court.

Dated, delivered and signed at Nakuru this 22nd day of April, 2010

M. J. ANYARA EMUKULE

JUDGE