



**IN THE MATTER OF PARTY AND PARTY COSTS OBJECTION TO TAXATION AND REFERENCE TO THE HIGH COURT UNDER RULE 11 OF
ADVOCATES (REMUNERATION) ORDER**

BETWEEN

ANGELO GITONGA PLAINTIFF

VERSUS

ANGELO GITONGA..... 1ST DEFENDANT

JUDGMENT

The matter before court is an application by way of Chamber Summons dated 15th October 2009. The applicant by that application seeks to set aside the assessment by Tigania SRMCC No. 92 of 2006 of the costs that were awarded to the plaintiff in that case. The applicants in this case are the two defendants in the Tigania matter. I must begin by saying that it is my considered view that there is no provision for either taxation or assessment by the magistrate like the one that was undertaken in this matter. This is because in respect of subordinate court costs there is no discretion given in assessment costs. I would just like to quote from a case I have decided in the past to show my point of view on the taxations being undertaken by the subordinate court. This is in the case **Mathiu Elijah Solo Vs. Joseph Murira** High Court Misc. Case No. 5 of 2008 where I had this to say:-

“There is no provision in the Advocate’s (Remuneration) Order for taxation of Subordinate Court’s Costs. A practice is however arising, where parties in the subordinate court file laborious and detailed bill of costs, and then engage the magistrate in the process of taxation. That in my view is uncalled for and should be discouraged. Subordinate court’s party and party costs should be assessed, following the provisions of Schedule VII of the Order. Where a party desires to invoke the learned magistrate in exercise of his discretion on instruction fee, such should be addressed when the court makes an order for costs to be paid.”

Having said so, when the lower court does involve itself in taxation of costs similar to the taxation that takes place in the High Court and where one of the parties is aggrieved by such taxation, what does such a party do? In the same case I have quoted above, I did consider that issue and this is what I stated:-

“Then one might ask, is there a provision for challenging the assessment made by magistrate? In the Advocate’s (Remuneration) Order, I could not find a specific provision for such a challenge. I am however of the view that the court can invoke, in view of that Lacuna, its inherent power to check such assessments of costs.”

I have also had opportunity to further consider the issue and I am of the view that Section 65 (2) of the Constitution also provides an answer to that question. That Section provides:-

“The High Court shall have jurisdiction to supervise any civil or criminal proceedings before a subordinate court or a court – martial, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts.”

I therefore I am of the view that the parties in approaching this court were correct because this court does have supervisory power over the subordinate court. As stated before, the subordinate courts are wrongly involving themselves in the taxation of detailed bill of costs which largely contain items that are not allowed under schedule VII of the Advocates Remuneration Order. In this case, the applicable order is the one of the year 2006. In respect of the bill of costs that was filed by the plaintiff in the Tigania matter, I have looked at the instructions fee and I find that the same did not conform to paragraph 1 of that schedule. The claim was for Kshs. 255,840/=. For that amount, the correct instructions fees is Kshs. 25,200/=. I also find that in many instances in the bill that was drawn, the party with the bill claimed for items that were not provided for in schedule VII. I will simply set out the numbers in that bill which do not conform to the schedule, that is, number 3, 6, 7, 8, 11, 14, 15, 16, 17, 18, 20, 21, 24, 26, 28, 29, 34, 36, 39, 43, 44, 45, 49, 50, 51, 52, 53, 54, 55, 56, 60, 68, 72, 81, 88, 96, 97, 99, 101, 102, 103, 104, 106, 107, 109, 111, 112, 113, 115, 117, up to 126. Those items are not provided for and ought not to have been awarded to the plaintiffs. There are just some few instances that the plaintiff understated the amounts that he ought to have claimed, for example, in item number 2 the claim should have been Kshs. 200/= and not as claimed Kshs. 45/=. That is according to paragraph 9 of schedule VII. Under item number 10 the plaintiff claimed Kshs. 2,500/= but under paragraph 6 the amount allowed is only Kshs. 1,500/=. Under item number 19, the plaintiff claimed Kshs. 1,500/= but the correct amount under paragraph 4 is Kshs. 1,400/=. Under item number 27 the only amount allowed is Kshs. 200/= as per paragraph 9. On item number 30, the court will allow the amount claimed because it conforms to the schedule. On item number 32 only Kshs. 1,000/= will be allowed as per paragraph 8. Although service of submissions on the defendant was objected by the defence, I do find that it is claimable and accordingly item number 41 will be allowed and similarly item number 42 will be allowed. In the end, having considered schedule VI and the bill that was presented before the learned magistrate, I do hereby set aside the costs that were assessed by SRMCC Tigania No. 92 of 2006 and I order that the costs of Angelo Gitonga in that case be taxed at **Kshs. 89,580/=**. There shall be no orders as to costs in this matter.

Dated and delivered at Meru this 26th day of July 2010.

MARY KASANGO
JUDGE