



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUSIA

Criminal Application 68 of 2009

BUSIA MUNICIPAL COUNCIL.....APPELLANT

VERSUS

JULIUS ORINA MANWARI

T/a Manwari & Co. Adv.....RESPONDENT

RULING

The application before the court was dated 23.3.2009. It seeks that all original files relating to Advocate-Client Bill of Costs between **M/S Manwari & Company Advocates** and **Busia Municipal Council** be transferred to Kakamega High Court for hearing and final determination.

The final are in all, 18 of them.

The grounds listed for the wanted transfer are summarized as follows:

- a) That the court is biased and has been biased in the past.
- b) That no party will be prejudiced if application is granted.
- c) That the firm of Manwari & Co. Advocates has always insisted on the taxation going to particular Deputy Registrar (s).
- d) That M/S Manwari & Co. Advocates has no retainership from the Applicant in the first instance.

The same grounds are contained in the affidavit supporting the application.

As stated hereinabove, there are 18 cases cited for transfer. The reasons or ground cited above were not limited or confirmed to any one cited case. The allegations were accordingly generalized and difficult to apply any one such case.

Secondly, the claims of bias made by the applicant were in relation to taxation of Bills of costs. A Bill of costs in any one case is usually itemized into numbers starting the service rendered by the advocate and indicating the fee charged for it. Each fee sought is based on a table of fees which specifies the amount of fees chargeable for a specific service while taking into account time involved. If a party attempts to charge more, the opposite party has the right to object and the taxing officer is put on notice to decide the correct fee.

Where the opposite party is aggrieved with the fee allowed in any items of the Bill of costs, he has a right to refer the specific item or items to a Judge in Chambers who will revise or uphold the fee charged. That kind of objection is authorized under the Advocates Remuneration Order, Rule 11.

The Respondent argued that the Applicant did not point out any one such case and show that it raised any particular objection which was irregularly taxed or handled by any particular Deputy Registrar.

On the other hand the Respondent averred that he served a particular Bill of costs after fixing a taxing date for which a taxation notice was served upon the Applicant or its advocate. Taxation was done regularly and without prejudice or malice with knowledge that where it was not so done, the applicant would have a right and liberty to appeal to a Judge in chambers whether the Applicant attended taxation or not.

The Respondent further denied that any cases file was taxed without a court file relevant to the bill being before the court.

I have carefully considered the application before the court and accept that the allegations are too generalized. No specific complaint was raised in respect to any file's taxation which would then be considered on its own individual merit. Further, there is a special procedure of objecting to any taxed item over which the aggrieved party has an objection. Such rule or procedure cannot have been promulgated for fun. Advocates Remuneration Ordere Rule 11, is the only way of raising objection to any item wrongly, unfairly or irregularly allowed by the taxing officer.

Further more no specific taxing officer was targeted in this application. Indeed, several of the Deputy Registrar's are new in the section. It would be unfair to bundle all of them into a condemned It. Specific accusation should have been made against a specific Deputy Registrar. That was not done.

In addition, this is not the proper application under which a retainership can be determined. If Manwari & Co. Advocates did not get retainership in respect of any service he rendered to the Applicant, a proper process to determine such complaint should have been filed. This application to transfer the cases which in any case have beeb finalized, would not achieve much.

All in all, this application has no merit. It is dismissed with costs to the respondent.

Orders accordingly.

DATED and **DELIVERED** at Busia this 6th day of September 2010.

D.A ONYANCHA

JUDGE