



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 848 OF 2007

GICHUKI KING'ARA & CO.

ADVOCATES.....APPLICANT

V E R S U S

**HAROLD WEBB T/A HAROLD WEBB & PARTNERS LTD.....1ST
RESPONDENT**

**HAROLD WEBB & PARTNERS LIMITED.....2ND
RESPONDENT**

R U L I N G

The taxation that is subject of this reference was rendered on 23rd July, 2008. It followed an advocate/client bill of costs dated 30th October, 2007 in which the only contested item was instructions fees of KShs. 34,122,013/=. In the main suit, that is HCCC No. 1253 of 1997, the claim was for a sum of KShs. 1,512,867,280/= with interest at 32% and full accounts and the settlement of the same against the 1st and 3rd Defendants; injunction against the 1st Defendant in relation to L.R. 209/9514 Nairobi; an order that the 2nd Defendant be precluded from transferring the premises to any other person than the 1st Defendant; and costs against the 1st and 3rd Defendants. The suit was dismissed for want of prosecution and the Plaintiffs ordered to pay the costs of the 1st Defendant. The costs were to be taxed and certified by the Taxing Officer. Costs were subsequently taxed at KShs. 22,734,173/=.

I have perused the main file which shows that Gichuki Kingara & Co. Advocates were instructed by the 2nd Plaintiff Harold H. Webb & Partners after the dismissal of the suit and filed a motion **under Order 44 rule 1** seeking the review and setting aside of the dismissal order and all other consequential orders. A preliminary objection was successfully taken to the motion by the 2nd Defendant on basis that the 2nd Plaintiff had already filed a notice to appeal and had therefore forfeited the remedy of review. The

appeal had been struck out. The 2nd Plaintiff brought various applications to challenge the execution of the taxed costs but was not successful.

This history is important to show that the Taxing Officer was correct to base the taxation between Gichuki Kingara & Co. Advocates and his client on the said KShs. 22,734,173/= and to find that the applicable scale was **Schedule VI (l) (b) of the Advocates Remuneration Order of 1997**. I do not agree with M/s Mumbi that the Taxing Officer was to proceed under **Schedule VI (13)** as counsel's instructions were wider than just opposing execution. It is also not true that the applicable provision was **Schedule VI (1) (L)** as this was not instructions in a case not provided for.

Regarding the quantum, the court will bear in mind that a taxation cannot be upset merely because, in its opinion, the amount awarded was high and it would not interfere with a Taxing Officer's decision unless the decision was based on an error of principle or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle (**First American Bank of Kenya –Vs- Shah and Others [2002] 1 EA 64**). M/s Mumbi did not persuade the court that there was any error or that the amount was excessive in any way.

However, the Taxing Officer taxed the costs as against both the 2nd Defendant and its director Harold Webb (who was described as trading as Harold Webb & Partners Ltd). It is clear that Gichuki Kingara & Co. Advocates were acting for the 2nd Plaintiff who were described in the plaint as:- **“a firm of Construction Economists, Quantity Surveyors and Management Consultants**” Harold Webb was the Managing Director. He may have been the one instructing the Advocates but there was no evidence that he assumed the responsibility to pay. The 2nd Plaintiff says it is a limited liability company. Its liabilities cannot be paid by, or forced on, the directors. The company had a legal personality different from its directors. This issue was raised before the Taxing Officer who considered it a joinder issue that should go to a judge for resolution. He had the power, I find, to point out that the Advocates were instructed by the 2nd Plaintiff and not by the director. This is not an issue of quantum that should go back to the Officer for consideration. I make order that the certificate shall issue as against the 2nd Defendant only.

The last issue was in regard to monies already paid to the Advocates by the 2nd Plaintiff which they wanted given credit to. That does not appear to have been an issue before the Taxing Officer.

In conclusion, the reference is disallowed, except that the taxed costs shall be as against the 2nd Plaintiff only. Costs of the reference will be paid by the 2nd Plaintiff.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF OCTOBER 2010

**A. O. MUCHELULE
J U D G E**