



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Application 626 of 2008**

**IN THE MATTER OF:**

HCCC NO. 1821 OF 1999  
GANIJEE GLASS MART LIMITED  
PAN AFRICAN GLASS INDUSTRIES LIMITED  
RASHIDA RAJABALI GANIJEE &  
KHADIJANAJMUDIN GANIJEE  
**VS**  
FIRST AMERICAN BANK OF KENYA LIMITED

**AND**

**IN THE MATTER OF:**

THE ADVOCATES ACT AND THE ADVOCATES  
RENUMERATION ORDER RULES 13, 22 AND  
SCHEDULE VI

**AND**

IN THE MATTER OF: TAXATION OF ADVOCATE/CLIENT BILL OF COSTS

**BETWEEN**

**ISSA & COMPANY ADVOCATES .....APPLICANT/ADVOCATE**

**VERSUS**

**GANJEE GLASS MART LIMITED  
PAN AFRICAN GLASS INDUSTRIES LIMITED  
RASHIDA RAJABALI GANIJEE & KHADIJA NAJMUDIN GANIJEE (EXECUTORS OF THE WILL OF  
NAJMUDIN)**

**JIWAJI GANINJEE .....RESPONDENT/CLIENTS**

**R U L I N G**

1. By a ruling of Miss E. N. Maina the Deputy registrar delivered on 24<sup>th</sup> February 2009 the Applicant’s bill of costs was taxed at Kshs. 72,023.70. The Applicant has filed this chamber summons under rules 11(2) of the Advocates Remuneration order, seeking to set aside the Taxing Officer’s ruling of 15<sup>th</sup> January 2009 as it relates to the determination of item No. 1 of the Bill of Costs dated 22<sup>nd</sup> August 2009. The Applicant also sought for order to refer the matter to another Deputy Registrar for taxation.

2. This application is premised on the grounds that the taxing officer acted contrary to the well settled principles of the law which she failed to consider in assessing item No. 1 of the Bill of Costs. She is also faulted for failure to take into account the provisions of schedule VI rule 1b of the Advocates Remuneration Order. It is alleged that she also failed to apply the principles in **HCCC 1821 of 1999 Ganjee Glass Mart Limited and three other s vs First American Bank Limited**. Thus it was submitted that the taxing officer erred in principle by awarding a sum that is so low as to justify an increase by another Deputy Registrar.

3. This application is supported by the affidavit of **Mr. Mansur Mwathe Isa** sworn on 4<sup>th</sup> March 2009. This affidavit elaborates the above grounds in greater details. According to the applicant, the services rendered are set out in the bill of costs, and they were not disputed. The bill identified the nature and the extent of the instructions. The applicant exhibited correspondence where he had rendered legal opinion and although the advocate came in after judgment, there was also an

intention to appeal against the judgment. There were meetings held by the advocates and the Respondent thus the taxing officer erred by disallowing the instructions fees and for relying on schedule VI rules 13 (c) of the Remuneration Order.

4. This application was opposed by the Client/Respondent; reliance was placed on the replying affidavit by **Ijaz Hussein Ganijee** sworn on 1<sup>st</sup> July 2009. Mr. Alibhai leaned counsel for the Client defended the order by the taxing officer and urged the court to find there was no error on principle. The taxing officer proceeded to tax the bill under paragraph 13 of Schedule VI because the Applicant came on record at the execution stage and the instructions were to oppose and defend the execution proceedings that were commenced by the Decree-holder. It was further submitted that HCCC 1851 of 1999 was finalized in 2003, according to a decree that was extracted on 8<sup>th</sup> September 2003. The Advocate therefore, came on record not to conduct any suit which had already been concluded. There is no way the advocate could have taken the conduct of a suit which was already concluded. Even the bill of costs set out clearly the instructions were to oppose execution proceedings.

5. It was further submitted that the Respondent denied having received any opinion and if the applicant conducted any research it was within their scope to do so. The bill could not have been taxed under Schedule VI rule 1b because the advocate was not given instructions to file a suit which was already finalized. The applicant was also faulted for failure to show the work which was done within a period of one month when he was on record so as to entitle him to a sum Kshs. 6.5 million. **Mr. Alibhai** urged the court not to interfere with the taxing officer's decision.

6. In analyzing the issues raised in this application, the principles to guide the court have been set out in along line of authorities; in particular the case of **Premchand Raichand Ltd and Another v Quarry Services of East Africa Ltd and Others EALR [1972] E.A.** The Court of Appeal in that case held that;

**“(i) The court must consider the following principles:**

***(a) That costs be not allowed to rise to such a level as to confine access to the courts to the wealthy;***

***(b) That successful litigant ought to be fairly reimbursed for the costs he has had to incur;***

***(c) That the general level of remuneration of advocates must be such as to attract recruits to the profession; and***

***(d) That so far as practicable there should be consistency in the awards made;***

**(ii) The court will only interfere when the Award of the taxing officer is so high**

**(iii) Or so low as to amount to an injustice to one party;**

**(iv) In considering bills taxed in comparable cases, an allowance may be made for the fall in value of money;”**

6. I am also persuaded by the principles set out in the case of **First American Bank of Kenya vs Shah and Others EALR (2002) 1EA Page 64** the judgment of **Ringera J** (as he then was) who held:-

**“The High Court was not entitled to upset a taxation merely because, in its opinion, the amount awarded was high and it would not interfere with a Taxing Officer's decision unless decision was based on an error of principle or the fee awarded was so manifestly excessive as to justify and inference that it was based on an error of principles (Steel Construction Petroleum Engineering (EA) Limited v Uganda Sugar Factor (1970) EA 141 followed. Under the Advocates (Remuneration) Order, some of the relevant factors to be considered were the nature and importance of the matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge.”**

7. Having regard to the above principles the question I have to determine is whether the taxing officer erred in principle for assessing the instructions fees under paragraph 13 of schedule VI. This can be answered by looking at particulars of services that were rendered by the advocate. These are clearly stated under item 1, it was instructions to oppose and defend the execution proceedings against a judgment holder who was seeking to recover over Kshs. 413 million from the Respondent. It is common ground that judgment was entered and decree issued in 2003. The applicant came on record to defend the execution proceedings on 12<sup>th</sup> June 2008 and by 16<sup>th</sup> July 2008 the instructions were withdrawn.

8. The applicant argued that the bill of costs ought to have been taxed according to schedule VI (1), my own reading of this schedule shows that instructions fees can be assessed under this schedule if the applicant was instructed to sue in an ordinary suit or to defend a suit which was not the case here because the suit had been finalized. The taxing officer gave the reasons for the order she made in the following terms;

***“As for item 1 it is clear from the particulars of services rendered that the Advocate herein only came in at the execution stage and their instructions were to oppose and defend execution proceedings commenced by the Defendant/Decree***

*Holder. I have considered the submissions by both sides carefully and I am in agreement with counsel for the client that the applicable paragraph here would be paragraph 13 of schedule VI but not paragraph 1(b) under which this item was drawn.*

9. I have examined that ruling against the particulars of the instructions as specified in the bill of costs, and the provisions of Schedule VI (1) of the Advocates Remuneration Order, I see no error in principle. Accordingly the application lacks merit and it is hereby dismissed. This being a dispute between an advocate and client over fees each party shall bear their own costs of this application.

**RULING READ AND SIGNED ON THE 1<sup>st</sup> OCTOBER 2010.**

**M. K. KOOME  
JUDGE**