



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
MISC. APPLICATION NO. 502 OF 2009

**KIPKORIR, TITOO & KIARA ADVOCATES.....ADVOCATES/
APPLICANT**

VERSUS

**KENYA SHELL LIMITED.....CLIENT/
RESPONDENT**

R U L I N G

The application before the Court is brought by way of a Chamber Summons dated 13th August, 2010 and taken out under Paragraph 11 of the **Advocates (Remuneration) Order**. The Client/Respondent seeks from the Court an order that its objection to the decision of the Taxing Officer on item 1 of the Advocates/Applicant's Bill of Costs filed on 28th September, 2009, be heard and decided, and that the costs of this application be provided for.

The application is supported by the annexed affidavit of Steve Luseno and is based on the grounds that –

1. ***The Taxing Officer erred in assessing instruction fees at Kshs.12,000,000.00;***
2. ***The amount awarded is too high as to constitute an error in principle on the part of the Taxing Officer.***
3. ***The basic fee under Schedule VIA 1 (f) to present or oppose proceedings under Rule 5 (1) of the Companies (Winding Up) Rules is Kshs.12,600.00 and it has not been shown that this was an exceptional and unusual matter to warrant an increase of the basic fee to Kshs.12,000,000.00 which is an increase by over 952 times.***
4. ***The Taxing Officer ignored the well settled principles of determining instruction fees and by doing so has misdirected himself and assessed the instruction fee at a sum which is manifestly and excessively high.***
5. ***The Taxing Officer erred in fact and in law by taking into account the debt prompting the petition when the matter for determination was a Winding Up petition. No judgment for the debt could have resulted from the petition. The fact that Rift Valley Railways (Kenya) Ltd. involves public funds is totally irrelevant.***

In opposition to the application, Mr. Kipkorir filed grounds of opposition which are really authorities from which relevant points of law can be extracted.

During the hearing of the application, Mr. Kiragu appeared for the Applicant while Mr. Korir appeared for the Respondent. After considering the pleadings and the respective submissions of Counsel and the authorities cited, I note that on reference to a Judge on a taxation of a Bill of Costs, the only matter which the Judge would consider is whether the Bill of Costs as taxed is manifestly excessive or manifestly inadequate, and the Judge has no jurisdiction to entertain a reference on a question of quantum. In other words, it all boils down to the concept of reasonableness. If the sum allowed falls outside the bracket of reasonableness, it is manifestly excessive or inadequate as the case may be, and the Judge may regulate it on a reference to him.

I note that the instruction fees in this matter ought to be charged under Schedule VI paragraph (f) (i) and (ii), subject to the introductory guidance which reads as follows –

“The fee for instructions in suits shall be as follows, unless the Taxing Officer in his discretion shall increase or (unless otherwise provided) reduce it.”

For Companies, the fee for presenting or opposing proceedings under **Rule 5 (1) of the Companies (Winding Up) Rules** is given as Kshs.12,600/=, and the fee for supporting a petition for Winding Up a Company is Kshs.2,520/=. It is clear that the Taxing Officer has no discretion to give less than the amount shown in the Schedule. He may, however, award more when he is satisfied, in his discretion, that there is a good reason to do so, as for example, when a case is of more than normal difficulty or complexity, or involved exceptional responsibility. When the Taxing Officer has decided that the scale should be exceeded, he does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved.

In the instant case, the Taxing Officer firstly took into account the amount involved being Kshs.335,803,224.00 as stated in the petition. He also considered the interest of the parties and observed that tax payers’ money was involved and that the matter was therefore of great interest to the Client/Respondent. In view of the foregoing, he exercised his discretion and increased the basic fee of Kshs.12,600/= to Kshs.12,000,000.00.

My understanding of the reasons for which the Taxing Officer may increase the basic instruction fees is that he has the freedom to do so upon considering the fair value upon the work and responsibility involved. For example, when a case is of more than normal difficulty or complexity or involves exceptional responsibility as observed above, he has a free hand to give more than the basic instructions fees. In the instant case, however, the Taxing Officer does not allude to any exceptional difficulty, complexity or responsibility involved. For that reason, the amount awarded seems to be outside reasonable limits and is, *prima facie*, manifestly excessive. On account thereof, I uphold the Respondent’s objection to the decision of the Taxing Officer on item 1 of the Advocate/Applicant’s Bill of Costs and direct that the said Bill be re-taxed before a different Taxing Officer. Each party will bear its own costs of this application.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 19th day of November, 2010.

L. NJAGI

JUDGE

