



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE

CIVIL CASE 62 OF 2007

LOKICHOGIO OROPOI KAKUMA)
DEV. ORGANISATION (LOKADO).....PLAINTIFF.

VERSUS

ALEXANDER LOSIKIRIA)
ADEK PEACE DEV. INITIATIVE
(APEDI).....DEFENDANT.

RULING.

By a chamber summons dated 5th day of November, 2008, pursuant to the provisions of Rule 11 (2) of the Advocates Remuneration Order section 63 (e) of the Civil Procedure Act, the applicant seeks orders:-

- (1) **THAT**, the decision of the Deputy Registrar (honourable P. GICHOHI) given on 17th June, 2008 taxing items 1, 2, 19 and 22 at Ksh. 30,315 be set aside.
- (2) **THAT**, court be pleased to re-assess the above items of the defendants bill of costs dated 30th October, 2007 or remit it to another Deputy Registrar of this court for taxation.
- (3) Costs be in the cause.

The application is based on the grounds:-

- (a) The Deputy Registrar erred in law and in fact and applied the wrong principles of law in her taxation of items 1, 2, 19 and 22.
- (b) The Deputy Registrar's award on instruction fees did not take into account the prayers sought.
- (c) The learned Deputy Registrar erred in failing to ascertain what the subject matter of the suit was.
- (d) The Learned Deputy Registrar erred in failing to consider the valuation report that was presented to her on the subject matter of the suit.

The application is predicated upon the annexed affidavit of Gideon Barongo Advocate sworn on the 5th November, 2008.

The application was served upon M.O. Ocharo & Co. advocates as per the affidavit of service of George Nyakundi sworn on 5th March, 2009.

On behalf of the applicant, it was argued that the firm of Gideon Barongo was instructed by the defendants/applicants to act for them in this suit.

A bill of costs exhibited "GOBI" was drawn by the defendant/applicants on 30th October, 2007. A ruling exhibited as "GOB 2" in respect of the bill of costs was delivered on 17th June, 2008. The bill was taxed at Ksh. 51,692/=.

On 4th June, 2008 the firm of Barongo & Co. advocates asked for reasons for arriving at the said figure by a letter exhibited as "GOB 3". Instead the Deputy Registrar referred them to the earlier ruling of 21st May, 2008.

Upon scanning the ruling, it dawned on the applicant that the Deputy Registrar erred in law and in fact and applied the wrong principles of taxation. Among other things the Deputy Registrar did not ascertain what the subject matter was, prayers sought, and the relevant provisions of the Advocate Remuneration Order. Last but not least the Deputy Registrar failed to consider the valuation report presented to her in respect of the subject matter of the suit.

By reason of the foregoing matters, the plaintiff is dissatisfied with the taxation especially failure to give reasons for the

decision. He thus prayed for the setting aside of the decision taxing the bill at Ksh. 51,692/=. Concomitantly, he prayed for an order of re-assessment of the items of the bill or remission of the bill to another Deputy Registrar of the High Court for taxation.

I have scanned through the application and the annexures to the bill of costs dated 30th October, 2007 and filed in court on 1st July, 2008. I have equally scanned through the ruling dated 21st May, 2008 delivered in the presence of Mr. Kidiavai for Mr. Barongo for the applicant but in the absence of the respondent. I have also scanned through the Notice of Objection to taxation dated 3rd June, 2008.

The procedure for objection to taxation is laid down in paragraph 11 of the Advocates Remuneration order. The said paragraph was amended by Legal Notice No. 73 of 8th May, 1983. it now provides as follows:-

“1. “Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

2. *The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the date of the receipt of the reasons apply to a judge by chamber summons, which shall be served on all parties concerned, setting out the grounds of his objection”*

By record of proceedings, a ruling was delivered on 21st May, 2008. The applicant objected to the taxation by a notice, dated 3rd June, 2008 but filed on 4th June, 2008, within 14 days. The objection was in respect of each and every item taxed. However there is no evidence whatsoever that the Deputy Registrar forwarded the reasons for her decision. Instead the Deputy Registrar referred the applicant to her ruling instead of giving the reasons.

In the circumstances the objectors could not apply to a judge in chambers setting out the grounds of his objection. It is axiomatic that without those reasons the applicant cannot come before the High Court. As it were there is no right of appeal from the decision of the Taxing Master to the High Court. An appeal only lies from the decision/ruling of the High Court to the Court of Appeal.

As matters now stand this court lacks jurisdiction to make a decision on the objection without reasons for the decision of the Taxing Master. For that reason the Deputy Registrar is ordered to forward the reasons for her decision within the next 30 days

In the meantime this application is without foundation.

It is struck out. The applicant may bring fresh application upon obtaining the reasons for the decision from the Deputy Registrar. A copy of this order to be served upon Hon. P. Gichohi, Deputy Registrar for compliance.

Dated and delivered at Kitale this 3rd day of February 2009.

N.R.O. OMBIJA.

JUDGE.