



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Miscellaneous Application 35 of 2009

1. The advocates(remuneration)(amendment)order 2006
2. The advocates remuneration order para 11(1) and (2)
3. subject appeal against
Costs awarded in the subordinate Court
 - a) Land disputes tribunal
Londiani Claim 52/07
 - i) Boundary dispute
Award filed and read on 7.2.2008
 - ii) Adopted as an order of Hon. Court 20th March, 2008
 - iii Notice of Motion 11.2.09 for resuming.
4. **Taxation – certificate of costs**
 - a) Party and party bill of costs filed 8.5.09 for assessment.
 - b) Sum of Kshs. 74,768 awarded and certificate of costs issued
 - c) Applicant aggrieved suit reasons of assessment
 - d) Reasons given by the court.
 - e) In reply costs not manifestively excessive
5. Held – certificate of costs be set aside. Application granted.
6. **Case Law** - Nil
7. **Advocate**
W.R. Kiprono advocate instructed by the firm of M/S W.R. Kiprono & Co. advocates for the Applicant – present

W.K. Ngetich advocate instructed by the firm of M/S W.K. Ngetich & Co. advocates for the Respondent – present

IN THE MATTER OF PARTY AND PARTY BILL OF COSTS

STANLEY KIPRAISI BETT APPLICANT
AND
PHILIP KIPSANG NGENO 1ST APPLICANT
JOSEPH CHERUIYOT SANG2ND APPLICANT

RULING

I: The advocates remuneration order para 11(1) and 2

1. The rules under the advocates remuneration order provides that a party who objects to the decision of the taxing officer who awards the amount of costs to be paid to a party that was successful in a case, that a letter by the one aggrieved be written to the taxing officer seeking the reasons as to why such costs has been awarded within 14 days. Such reasons are then served upon the objector and thereafter upon service, the objection would file an application to the Hon Judge in the High Court. If the Hon. Judge's decision is aggrieved against, the applicant may seek leave of court to appeal to the court of appeal.
2. In the reference before me a land dispute tribunal case No. 82/07 dealing with Land LR Kericho/Londiani/Jourbert/Kedowa Black 2/(Lelsotet) 73, 2.0 Hectares that arose on the issue of a boundary dispute.
3. On the conclusion of the matter, a notice of motion was filed seeking to make the decision of the tribunal an award of the court, after the issue of the demarcation of respective boundaries was clarified the matter was concluded.
4. The respondent filed an application known as a party and party bill of costs similar to that filed in the High Court and went for taxation before the Hon. Magistrate. After taxing the said bill, the Hon. Magistrate issued a certificate of costs under **order XX r 8** Civil Procedure Rules.
5. The total amount was Kshs. 74,768/=. The respondent objected to this and prayed it be set aside. It was noted that the respondent then filed an objection whereby he sought reasons for the said award of costs. On receiving the reasons the applicant filed this present reference and parties were heard before the inter-partes on 4th June, 2009.

II: Arguments

6. The applicant claimed that the amount awarded was excessive and unreasonable. All the respondent did was to file a notice of motion. Most of the matter was dealt with the lands dispute tribunal.
7. The respondent in reply stated that these costs were not excessive and the same was correct.

III: Opinion

8. In the magistrate court taxation per se is not done but the court ascertains and certifies the total amount required under schedule VII of the advocates remuneration order.
9. The Hon. Magistrate's gave his reasons for taxing the said schedule, as, under the Lands Disputes Tribunal cases, no provision is made out on the mode of taxation. He therefore relied on schedule V and not schedule VII.
10. Schedule V deals with "fees in respect of Business the remuneration for what is not otherwise prescribed or which has been the subject on an election under para 22(*dealing with advocate- client costs where the client must be notified*).
11. Schedule VII are costs of proceedings in subordinate courts and specifically deals with party and party costs.
12. The magistrate awarded party and party costs on the higher scale. The lower scale is applied in all cases where no defence or other denials of liability has been filed and the higher scale applied in all other cases.
13. The Hon magistrate awarded

1a) Party and party costs	36,000/=
<i>(Higher scale)</i>	

b) i) applications	7,000/=
ii) Attendance	8,420/=
2) Court fees on suit	100/=
3) Witness expenses	
This cancelled and substituted	6,500/=
for service of application and orders	
4) Other disbursements	4,590/=
5) Court fees	
a) Decree – This was substituted	11,908/=
for interest/VAT	
b) Certificate of costs	250/=
	Kshs. 74,768/=
	=====

14. The Hon. Magistrate was to give reasons on

- 1) "Instruction fees.
- 2) Items 2-14 of party and party bill of costs
- 3) VAT at 16%"

15. No separate reasons was given but a global reason. On perusal of the subordinate court file a schedule of bill of costs was drawn as per the High Court and it was this (items 2-14) that was based on for the costs at 74,768/= in the subordinate court.

16. This is excessive and not according to law. Schedule V should not be used in this instance but the schedule prescribed for subordinate courts being VII.

17. I grant the application and do hereby set aside the certificate of stated costs. I hereby order that this matter be remitted to the subordinate courts for assessment before both parties and according to the given scale.

18. I award costs to the applicant.

DATED this 17th day of June, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

W.R. Kiprono advocate instructed by the firm of M/S W.R. Kiprono & Co. advocates for the Applicant – present

W.K. Ngetich advocate instructed by the firm of M/S W.K. Ngetich & Co. advocates for the Respondent – present