



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CIVIL APPLICATION 1156 OF 2006

WASUNA & CO. ADVOCATESPLAINTIFF

VERSUS

DELPHIS BANK LIMITED 1ST DEFENDANT

KASSIM BHARADIA 2ND DEFENDANT

R U L I N G

Application dated 25/4/07 under **Rule 11, Advocates Remuneration Order, Cap.16** of Laws of Kenya. The orders sought are the setting aside the Taxing Officer's ruling made on 20/1/2007 in client/advocate bill filed herein which was taxed and the application to be sent back to the Deputy Registrar for taxation afresh. The grounds upon which application are based are set out in the application all numbering 7. There is supporting affidavit of Kassim Bharadia and a further affidavit of the said Kassim Bharadia and applicant's list and bundles of authorities.

The reasons given for the taxation complained of is exhibited "KB2". The authorities relied upon by Mr. Mogeni are:

1. **A.N. Ndabiri & Co. Advocates vs. Mwea Rice Growers Multi-purpose Co-operative Ltd. - HCC No. 698/2004.**

The application was brought under **Section 51 (2) Advocates' Act**

Cap.16. In this matter the court found that there was no dispute as to retainer and granted order for the payment of advocate's fees.

2. **HCC No.469/2004 – Mamicha & Co. Advocates vs. Kenya Knitting & Weaving Mills Ltd.**

In this case the court stated that **Section 51 (2)** gives the court discretion

which is only exercisable where there is no dispute as to retainer and a certificate of the Taxing Officer has been issued and has not been challenged, judgment may be entered.

On the applicant's side, the decision of High Court in (1) **Oruko & Associates vs. Apollo (K) Ltd.** –

it was held that under **Section 51 (2) Advocates Act** a certificate of Taxing Master is final, but as to the amount of costs only. (2) **Joreth Ltd. vs. Kigano & Associates** – This is a Court of Appeal decision. The Court of Appeal held that where the value of the subject matter of a suit could not be determined from the pleadings, judgment or settlement, a Taxing Officer was entitled to use his discretion in assessing instruction fees and in doing so, the factors to be taken into account included the nature and importance of the cause, the interest of the parties, the general conduct of proceedings, any directions of the trial judge and all other relevant circumstances.

In the complaint number 6 that the Advocate only filed on behalf of the applicant's statement of defence and application for security of costs. It is true that the defendant's costs are earned once the defence has been filed. It appears there was no agreement to fees and on taxation the advocate/client bill was taxed at Kshs.1,340,250/=.

It is submitted that the Taxing Officer erred in taxing the bill in that the subject matter cannot be determined from the pleadings in **HCC 353/03**.

I have noted that the assets and business were valued at Kshs.124,861,398/=. The respondents were opposing declaration that their actions of selling business and assets were irregular. There were special circumstances of the suit, the difficulty of the matter. The assets were sold by the clients. Security for costs was ordered at Kshs.1 million. The basic fees having been ascertained, the Taxing Officer has discretion to increase the amount if he thinks it is justified under Schedule VI 1 (b).

The applicant is of the view that in this case proper provision to be applied is Schedule VI 1 (b) which give Kshs.4.5 million. On the item 18, it is submitted the number of folios being 45 and fees would be Kshs.30/= per folio. The amount would be Kshs.2,025/= and other items are provided for in the Schedule. The client admits that **HCC No. 353 of 2003** was the fate of the business and assets of the plaintiff. They claim item one.

I have perused the reasons given by the Taxing Office and it is clear he considered all issues as he should have done. He applied correct principles and I do not find any merit in the objections raised.

I dismiss the objections with costs.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 29th day of July, 2009.

JOYCE N. KHAMINWA

JUDGE