



REPUBLIC OF KENYA

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

Civil Suit 516 of 2007

P.M. MULWA.....PLAINTIFF

VERSUS

MAVOKO MUNICIPAL COUNCIL DEFENDANT

RULING

The application before court is a Chamber Summons dated 6th May, 2008, brought under Paragraph 11 (2) of the advocates' Remuneration Order. It is an objection by the client/respondent against the decision of the taxing officer made on 24th April, 2008.

The application is vehemently opposed by the

Respondent/advocate.

I have considered submissions by counsel for the parties and the authorities cited by the applicant's counsel.

For consideration before me is whether or not to allow the reference.

The applicant contends that the taxing officer erred in law in allowing basic instruction fees in the sum of Kshs. 1 m without assigning any reason for the increase and for awarding a sum of Kshs 10,000/= for instruction fees for defending an application as opposed to kshs 3,000/= provided for in the Remuneration Order. Further that the taxing officer misdirected himself in finding that the Respondent/ Advocate was entitled to getting up fees even though the case is still pending, as trial has not yet commenced. The applicant's counsel further submitted that the taxing officer erred in allowing disbursement without documentary proof.

On his part the Respondent/Plaintiff contends that the matter was complex that he had claimed **Ksh.1,339,098.20/=** which amount was reduced to Kshs. 1 M. It was submitted also on behalf of the respondent, that the taxing officer has discretion to award a sum above the basic. That in the circumstances of the matter the taxing officer was justified in awarding sum of Kshs.1 M and **Kshs 10,000/=** due to the complexity of the matter. It was also argued that the getting up fee claimed was in line with schedule 6 rule 2 (2). On the issue of disbursement, although there is an admission that no documentary evidence was adduced counsel for the respondent argued that the sum was minimal and was rightly considered.

It is not disputed that the subject matter of the suit is **Kshs.63, 272,212/=**. The taxing officer noted as much. He also noted that the matter is still pending. The taxing officer also noted that the basic fee payable is **Kshs.989,083/=** , however no reason was given why the registrar awarded Kshs.1 million albeit the margin is minimum.

On item No.2, the fee payable under the advocates remuneration is **Kshs 3000/=**. No reason was been advanced by the taxing officer for awarding a higher sum.

I did not have the advantage of having the parent file and therefore did not have the benefit of knowing whether the matter had been set down for hearing several times or not. However I find the Sum of **Kshs.333, 333/=** awarded as getting up fees in the circumstances excessive if paid against the instruction fee, as the matter did not take off while in the hand of the Respondent. On the issue of disbursements it is admitted that no receipt were produced and in my view therefore the same ought not to have been granted.

In the circumstances therefore I allow the reference and direct that matter be placed before another registrar for consideration of the items objected to by the respondent/client.

Costs in the cause.

Dated and delivered at Nairobi this 9th day of November, 2009.

ALI-ARONI

JUDGE