



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 272 of 1996

ALI-AMIN INSURANCE AGENCY..... PLAINTIFF/RESPONDENT

-VERSUS-

SHARIFF M.A. OMAR.....1ST DEFENDANT/OBJECTOR

CREDIT FINANCE CORPORATION LTD. 2ND DEFENDANT

RULING

An objection to the taxation of costs was made by virtue of rule II of the Advocates Remuneration Order. The first ground of objection was that whereas 1st defendant had claimed a fee of Kshs.150,000/= the taxing officer had allowed Kshs.15,000/= under one of the items (item 6).

The second ground of objection was that whereas 1st defendant had claimed a fee of Kshs.10,000/= for item No. 14, the taxing officer allowed a figure of Kshs.2,000/= The third ground of objection was that the taxing officer had taxed off fees for attendances, on items No. 37, 44, 48, 54, 61, 67, 77, 88, 91, 93, 96, 101, 103, 105, 108, 136, 145, 159. The fourth ground of objection was that on item 68, the fee allowed was Kshs.2,000/=, whereas the minimum fee should have been Kshs,2,500/=.

Learned counsel **Mr. Kasmani** urged that the taxing officer had erred by allowing instruction fee on the value of the subject matter (at Kshs.1,115,000/=) for 2nd defendant but not for 1st defendant. Counsel submitted: “It is the same claim against both ... defendants. It is not fair to punish the 1st defendant even if he has slipped ... in not specifically stating [the] value of the subject matter”. Counsel submitted that “the

instruction fee should be the same as allowed to 2nd defendant, i.e. Kshs.71,725/= ...”.

On item 14 of the bill of costs, under which mandatory injunction and specific performance were sought, counsel urged that the application was not a simple one and since the minimum fee is Kshs.3,000/=, the sum of Kshs.10,000/= which was claimed, was fair and should have been allowed.

On items No. 37, 44, 48, 54, 61, 67, 76, 77, 88, 91, 96, 101, 103, 105, 108, 136, 145 and 159 counsel urged that the attached fees were in respect of attendance on opposing parties, acknowledging and receiving receipts for pleadings, affidavits and notices served. Counsel said these items were provided for under clause 7 (g) of the Remuneration Orders which prescribed a fee of Kshs.170/00 per 15 minutes, and Kshs.60/= for 3-4 minutes.

Under item 68 of the bill of costs, counsel urged that since the application was contested, the sum of Kshs.5,000/= which was claimed in fees was justified (clause 1 (o) (viii) of the Remuneration Orders). It was urged that since the minimum fee in this respect should have been Kshs.2,500/=, it was an error to allow only Kshs.2,000/=.

The respondent contested the application, firstly on the ground that it had been filed on 11th February, 2009, almost three months after the date when it should have been filed – and without any application for extension of time. The application, learned counsel **Mr. Kiarie Kariuki** contended, was improperly before the Court and ought to be dismissed with costs.

The prayer for dismissal of the application was founded on other grounds as well. The applicant had conceded that no value had been indicated in the bill of costs, as regards the applicant’s first ground; and as a result, there was no basis for allowing any fee other than that which the taxing officer assessed. Counsel urged: “It is trite law that the Court will not give an applicant what he has not prayed for; the applicant having chosen not to state the basis for item No. 6 of the bill of costs, having failed to bring the matter to the attention of the Taxing Officer or amend the same when the bill came up for taxation” **Mr. Kariuki** urged that it was now too late in the day to fault the decision of the taxing officer. It was submitted that the applicant had not shown that the taxing officer’s discretion was not exercised judicially – and therefore there was no basis for setting the taxing officer’s decision aside.

As to item 14, which is covered in the applicant’s ground No. 2, learned counsel urged

that there was no certification that the application had been a complicated one; and so a claim above Kshs.3,000/= was unmerited – so that there would be no basis for claiming Kshs.70,000/=.

Counsel submitted that the application leading to the bill of costs had been served together with the summons and the plaint – and therefore the application cannot be subject to separate instruction fees, from the fees claimed in respect of the plaint.

With regard to ground No. 3 of the application, learned counsel submitted that the objector had not stated why attendance on the opposite party was necessary – and therefore the taxing officer was right in disallowing the stated items.

Learned counsel contested the objector's point set out in ground No. 4 (item 68): the objector does not state why the taxing officer's order allowing the item at Kshs.2,000/= was faulty. That figure, counsel urged was in all respects right, as the amount allowed under the scale in the Remuneration Order, is Kshs.1,750/=.

I have read the taxing officer's detailed ruling, for the purpose of examining the reasoning which led to each head of the taxation. The taxing officer states the reason for taxing item 6 at Kshs.15,000= under paragraph 1 (d), Part A of Schedule VI to the Advocates Remuneration Order, 1993. Since the value of the subject-matter was not specified, there was no basis for allowing a taxation higher than the said figure of Kshs.15,000/=.

The taxing officer explains the basis of taxation for attendance fee: item 46 is taxed at Kshs.600/=, for the reason that attendance was not shown to have been for a period of time longer than half an hour.

The taxing officer explains every aspect of the taxation, and attaches the applicable provision of the Advocates (Remuneration) Order.

In the objection now before me, there are differences of opinion as to the levels of taxation that should have been allowed; but I have not seen any serious claim that the taxing officer over-extended or abused his power. What I see is a measured exercise of the taxing discretion, within the terms of the Advocates (Remuneration) Order. In principle, normal exercises of discretion by the proper officer ought to be upheld. In the instant case, the objector has shown nothing abnormal in regard to the exercise of the power to tax a bill of costs.

I have also carefully considered the sets of submissions by counsel, and I have found

the objector's submissions to disclose nothing that warrants this Court reversing the taxing officer's exercise of discretion.

Consequently, I dismiss 1st defendant's Chamber Summons of 21st November, 2008 with costs to the plaintiff/respondent.

DATED and **DELIVERED** at **MOMBASA** this 14th day of December, 2-009.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Ibrahim

For the 1st Defendant/Objector: Mr. Kasmani

For Plaintiff/Respondent: Mr. Kiarie Kariuki