



MWANIKI NGIRI.....APPLICANT

VERSUS

GICHUGU LAND DISPUTES TRIBUNAL.....RESPONDENT

RULING

The applicant has filed this reference to this court questioning the issues arising out of Taxation of Bill of costs presented for taxation before court taxing officer under Advocates Remuneration Order Rule 11 (2). The reasons for objection were given on 9/1/2007 stated thus:

“1. On item one the court considered the nature of the matter which was before the High Court and concluded that the first item was reasonable in the circumstances.”

A perusal of the bill shows that the claim was for instructions to take up judicial review proceedings on matters of Baragwi/Raimu/824. For this item schedule VI (i) provides for at least Shs.20,000/= costs. The Taxing Officer thought Shs.120,000/= was reasonable.

2. On Item 2 thereof was allowed at Shs.3,500/= for drawing Judicial Review application .

3. On Item 31 for attendance for full hearing Shs.7500/= is challenged and item 33 service of Bill to Meru shs.5,800/= The other objection is that the taxation was ex parte in absence of counsel. The applicant asks that the bill be remitted back for taxation. Counsel for Applicant relied on the decision of *Mwera J. in the Misc. application No. 391 of 2002 – Mereka Advocates – Vs- National Bank of Kenya Ltd made on 31/10/2002.* In that application the court found there was an error in principle and that the bill was combined instead of being set out separately according to paragraph 23 of Remuneration Order.

The court also emphasized and reiterated the general principle that the determination of a taxing officer may only be varied in matters of exceptional nature otherwise where discretion is validly and properly exercised is not to be interfered with. Again the learned Judge stated “**Taxation is a Judicial Act therefrom is appealable even to the Highest Court in the land. It should therefore be approached in a judicial manner**”

In this matter the applicant swears that the bill was taxed exparte because the advocate had instructed another advocate to hold her brief and seek adjournment but the taxing officer declined to grant adjournment and proceeded to tax the bill as drawn. It is to be noted that there was no objection as the taxation was carried out in absence of the Applicant. It is in the discretion of the Taxing Officer to allow or reject an application for adjournment particularly as proper notice had been given and there was

objection from the other party.

I have perused the pages on taxation of costs from the Text of Hints on **Civil Procedure Vol. 1** by **R.J. Kuloba J.** My findings in the matter are that:-

1. The officer presiding the taxation was entitled to use her discretion in allowing or rejecting application for adjournment.
2. The taxation was not ex parte as there was present in court counsel representing the applicant.
3. There being no objection to the bill as presented the taxing officer was entitled to tax the bill as drawn the relevant provision stated “not less than 20,000/=” which is the minimum figure. The taxing officer was entitled to exercise her discretion to grant an increase. Her discretion as to how much to be increased was exercised and she reached a figure of Shs.120,000/=. In the said comments by **Kuloba J.** on costs at paged 198 paragraph 5 is stated that “Nothing is more clearly settled with regard to the taxation of costs than that a taxing officer is supreme in all questions of the amount and unless some question of principle is involved”, it is not for Judge to interfere with discretion of taxing officer.

In this case there is no principle of error involved. The applicant only says the amount is too large. In the circumstances, I find no reason to interfere with the discretion of the taxing officer. The objections are based on the issue of quantum. I do not find that the amounts are too excessive as to be based on wrong principles.

I therefore dismiss this application with costs to the Respondent.

Dated this 21st January, 2008.

J. N. KHAMINWA

JUDGE

21/1/2008

Khaminwa – Judge

Njue – Clerk

M/s Njeru for Wairimu

Ruling read in open court.

J. N. KHAMINWA

JUDGE