



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Misc Appli 132 of 2005**

**EVA AMAYAMU:.....APPLICANT**

**VERSUS**

**TRANS-NATIONAL BANK LTD:.....RESPONDENT**

**RULING**

By consent of the parties this ruling also applies to Eldoret Misc. Applications Nos. 133-141 of 2005. All those applications were filed by the Estate of the late Eustas Douglas Amayamu who was trading in the name and style of **D.M. AMAYAMU & CO. ADVOCATES**. The respondent in all those application was Trans-National Bank Ltd who has brought this reference. The said bank and retained the late Amayamu Advocate to act for them in several cases which he filed in different courts. Later some of those cases were dismissed for non-prosecution. The Advocate had been paid some money by the bank. He later died and his estate filed bills for taxation under Par 13 of the Advocates (Remuneration) order. When the bills came up for taxation before the taxing master counsel for the bank raised objections and submitted that the Advocate had been paid some monies and that also some cases were dismissed for his inaction. The taxing officer proceeded and taxed the bills and the respondent being dissatisfied brought this reference under Par.11 of the order.

I have carefully considered the application and submission by the counsels. The Deputy Registrar made a finding that the applicant bank had paid to the firm of **D.M. AMAYAMU & CO. ADVOCATES** a total of Shs.396,500/= in respect of all the files. There was no dispute that the bank had instructed the said Advocate firm to file several suits to recover debts. The suits were filed but by the time the advocate died they had not been heard and some were dismissed for want of prosecution. The finding of the taxing master that the firm had been paid Shs.396, 500/= after Mr. Amayamu had made a demand notice to the bank is not challenged as no reference was filed against that finding. The Taxing master properly found that the monies were deposited in the Advocates account. There were deposits slips exhibited. The taxing master after finding some monies were paid went ahead to do taxation and them subtracted the amounts paid. She used the 1993 Advocates Remuneration order which was proper as the suits were filed in 1996 before the amendments were done to the order in 1997. However I do agree with the counsel for the applicant's bank that the money paid to the advocate was consumarate with the work done and the taxing master should have declined to order any further payments. For instance in this particular application the advocate was paid Shs.50, 000/= and in other cases he was paid various amounts. Apart from filing the suits the Advocate did not take any further serious steps and eventually the cases were dismissed. The bank had to retain another advocates to proceed with the cases and paid them. As it were the bank paid twice for each suit. I feel that was unjust for the taxing master to order further payment even after the counsel passed on.

The upshot of the above therefore is that I allow the reference and set aside the ruling on taxation delivered by the taxing master on 17<sup>th</sup> January, 2006. As agreed by counsel this ruling applies to Misc. Appl.No.133-142 of 2005.

Each party to bear its/her own costs.

Dated and Delivered at Eldoret on 13<sup>th</sup> day of February, 2008.

**KABURU BAUNI**

**JUDGE.**