



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 490 of 2000

THE REGISTERED TRUSTEES OF MOMBASA

PARSI ANJUMAN PLAINTIFF

- Versus -

NEW ERA EDUCATION SOCIETY LIMITED DEFENDANT

R U L I N G

The application before the court is brought by a Chamber Summons dated 5th February, 2008, and taken out under paragraph 11 of the “Advocates (Remuneration Order as may be revised)”. It seeks from the court the following orders:-

1. THAT the learned taxing officer’s ruling disallowing “*IN TOTO*” the plaintiff’s claim for fees for services rendered described in items 39, 56 and 66 of the plaintiffs bill of costs dated 26th July, 2006, is erroneous both in law and on the facts of the case before him.
2. THAT the learned taxing officer failed to apply the relevant provisions of the Advocates (Remuneration) (Amendment) Order, 1997, to the facts of the case before him and thus arrived at a conclusion wholly erroneous in law.
3. THAT the learned taxing officer failed to take into consideration provisions of Section 2 of the Civil Procedure Act and Order VI rules 9, 10 and 11 and Order VIII rule of the Civil procedure Rules and a fortiori, arrived at a decision erroneous in law.
4. THAT the learned taxing officer ought to have and yet failed to apply or consider by way of analogy the provisions of paragraph 4 of Schedule VI, Part A (Party and Party Costs) which provides for fees for drawing a pleading not otherwise provided for, and
5. THAT the learned taxing officer failed to consider and deliberate properly or at all on all the issues before him and thus arrived at a conclusion wholly contrary to law.
6. THAT the costs of this application be provided for.

The application is supported by the annexed affidavit of Anil Suchak, Advocate, and is based on the

grounds:-

(a) THAT the plaintiff's said bill of costs has been taxed contrary to all the relevant provisions of the Advocates (Remuneration) (Amendment) Order, 1997 and not in accordance therewith and items 39, 56 and 66 disallowed "IN TOTO", and

(b) THAT it is in the interest of (a) litigants and (b) the legal profession that the legal issues raised in this objection to taxation filed under paragraph 11(2) of the Advocates Remuneration Order, 1981, as amended, be determined and resolved by this Honourable Court.

Without taking one more step, it is self evident from these pleadings that the orders sought by the applicant are not properly pleaded. A close scrutiny of what he calls orders in the application can best be described as grounds of appeal. None of them can pass the test of an order. For instance, if Order 1 were to be granted, it would read thus:-

"THAT the learned taxing officer's ruling disallowing "IN TOTO" the plaintiff's claim for fees for services rendered described in items 39, 56, 66 of the plaintiff's bill of costs dated 26th July, 2006 is erroneous both in law and on the facts of the case before him."

Such a statement may pass for a declaration but, certainly, not an order. "Order" 2, for that matter, is even more graphic. As an order, it would read as follows:-

"THAT the learned taxing officer failed to apply the relevant provisions of the Advocates (Remuneration) (Amendment) order, 1997 to the facts of the case before him and thus arrived at a conclusion wholly erroneous in law."

Such a statement can never be an order. An order is, in law, a command or direction by the court which is capable of being enforced. None of the "orders" sought by the applicant is capable of enforcement. They could be used as grounds for granting some certain and specific orders, but they themselves do not and cannot qualify as orders.

For these reasons, I find that the application before the court is not competent. It is accordingly struck out.

Dated and delivered at Mombasa this 9th day of May, 2008.

L. NJAGI

JUDGE