



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Misc. Application 1478 of 2007

A M. KIMANI & CO. ADVOCATES.....APPLICANT

VERSUS

KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

The application for my determination is brought under paragraph 11(2) of the Advocates (Remuneration) Amendment Order 2006. The prayers are:

- (1) That the court be pleased to set aside its entirety the decision of the taxing master made on 15th November, 2007.
- (2) That the court do order that the advocate's bill of costs dated 4th September, 2007 be referred back to the taxing officer with appropriate direction or alternatively the court do make such order as just and fair in the circumstances.
- (3) That costs of reference be awarded to the advocate/applicant.

The grounds in support of the application are:

1. THAT the decision of the taxing officer in taxing our instructions fees at Kshs.20,880 under item 1 goes against the provisions of Advocates Remuneration Order and therefore unlawful.
2. THAT the Taxing Officer misdirected herself and failed to give reasons for taxing item 1 at 18,000 and acted contrary to established principles of law while assessing our instructions fees.
3. THAT the Taxing master erred in law and in fact in assessing items 12 and 36 at Kshs 120 against the provisions of the Advocates (Remuneration) (Amendment) Order 1997.
4. THAT the taxing officer erred in taxing off items 14, 70 and 78.
5. THAT the taxing officer erred in law and in fact in assessing items 52, 54, 59 and 66 at Kshs 120 against the provisions of the Advocate (Remuneration) (amendment) Order 2006.
6. THAT the taxing officer erred in law in assessing items 56, 57, 61, 62, 64, 68 and 69 at Kshs.375 against the provisions of the Advocates Remuneration Order 2006.
7. THAT the decision of the taxing officer has no basis in law.

It is the contention of the applicant that the decision of the taxing officer offends the Advocates Remuneration Order and is therefore unlawful. Apart from that contention no other ground is set out why the applicant wants this court to interfere and upset the decision of the taxing officer.

It is not contested that the value of the subject matter that gave rise to the present taxation was Kshs.55,000/= plus costs and interests made against the respondent herein. It is not also contested that the present applicant were the advocates acting on behalf of the respondent in that suit. Therefore it can be safely concluded that this is Advocate/client bill of costs. Another issue which is uncontested is that the Advocate/client bill was brought under the Advocate Remuneration Order of 1997 and the Advocates Remuneration Order of 2006 for services rendered or undertaken after 17th November, 2006.

I have looked at the Advocates Remuneration Order against the Bill raised by the advocate and in my humble view there is absolutely nothing which entitles this court to interfere with the decision of the taxing officer. As rightly pointed out by the applicant the value of the subject matter in CM.CC. 2473 of 2000 was Kshs.55,000/=. In my humble view the taxing officer exercised her discretion in a generous manner and apart from the fact that there was no representation from the respondent this court would taken appropriate measures which may not have been to the benefit of the present applicant.

Having regard to the care and labour required and the fact that the matter handled by the applicant was fairly simple, I think the decision by the taxing officer was fair and reasonable in so far as the present taxation is concerned. I therefore think that there is no basis for me to interfere with an award which I believe is generous.

In the premises it is my decision that the reference by the applicant is unmerited and it is hereby disallowed with no orders to costs. I think the advocate should be happy with the generous award they got from the taxing master.

Dated, signed and delivered at Nairobi this 10th day f June, 2008.

M. A. WARSAME

JUDGE