



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Appli 1399 of 2007

MADZAYO MRIMA & CO. ADVOCATES.....ADVOCATES/APPLICANT

VERSUS

CROWN PRINTERS & STATIONERS (K) LIMITED...CLIENT/DEFENDANT

R U L I N G

By a notice of Preliminary Objection dated 5th May 2008 the Client/Respondent has raised objection to the taxation pending between the Advocate/Applicant and the Client/Respondent herein. There are three points raised:

1. The Bill of Costs dated 30th August 2007 is in breach of Section 7 of the Civil Procedure Act, Cap 21 Laws of Kenya.
2. The Bill of Costs is fatally defective and should be struck out.
3. The Bill of Costs dated 30th August 2007 is an abuse of the court process.

The objection challenges the Bill of Costs filed by the Advocate for taxation of its Bill of Costs dated 30th August, 2007. Paragraph 1 of the Bill of Costs states as follows:

“To professional fees...”

for instructions to take conduct and act in a sale transaction between SHETHI AGENCIES (1980) LTD (VENDORS) AND CROWN PRINTERS AND STATIONERS (KENYA) LTD. (PURCHASER) for sale of property known as L.R. Number 209/10830/6 situated in City of Nairobi Kenya comprising of 0.247 Acres (0.1 HECTARES) being the premises in grant registered in Land Title Registry at Nairobi as LR. No. 49860 together with buildings and improvements thereon and all machineries, spares and accessories amounting to Kshs.55,000,000 and to which the Vendors agreed to sell and the purchaser to purchase the property know as L.R. No. 209/10830/6 situate in... being the premises comprised in a grant registered in Land Titles Registry as LR No. 49860 TOGETHER with the buildings and improvements and ALL that machinery being thereon except one sheeting machine and one Guillotine Machine...”

Mr. Washe argued this Preliminary Objection on behalf of the Client while Mr. Gikandi represented the Advocate and opposed the same on behalf of his client.

The client's first contention is that the Bill has already been taxed in Misc. Civil Appl. No. 1394 of 2007. Mr. Washe submitted that the Bill in the latter application was similar to the pending one in the instant miscellaneous application. Counsel contends that the subject matter in both applications are same i.e. LR. No. 209/10830/6. Parties are Sheth Agencies and Crown Printers. Counsel also contends that the Advocates list of documents produced in support of the taxation in the instant application are same as those produced in 1394 of 2007.

In regard to the parties, i.e. Sheth Agencies and Summir Enterprises Limited, Mr. Washe submitted that the costs touching on these parties were taxed in Misc. Civil Application No. 1401/07. The said taxation was for Sale Agreement of machinery, spares and accessories situated on LR. 209/10830/6, which is the same property as in instant case. Mr. Washe argued that in regard to costs touching on the sale of land LR. 209/10830/6 and property on the said land, has been settled in the two matters i.e. 1394/07 and 1401/07. Both Bill of costs are also attached.

Mr. Gikandi on his part did not agree with Mr. Washe. Counsel submitted that the instant Bill was in regard to land LR. 209/10830/6 and improvements, machinery, spares, accessories and buildings thereon and is between the Advocate and the Purchasers who were bound to bear the costs of the transaction as provided at page 4 of the Agreement, Clause 18.

In regard to 1394/07 Mr. Gikandi submitted that the transaction and the parties were different.

Mr. Gikandi submitted that 1401/07 was a Bill relating to a different transaction for spares and machinery on the same land.

I have all the Bill of Costs before me. I have set out the one in the instant application.

The Advocate/Client Bill of Costs in 1394/07 is for Agreements between Sheth Agencies (1980) Limited being Vendors, and Crown Printers & Stationers (Kenya) Limited as Purchasers, and is for taxation between the Advocate who is the Applicant, and the Client Crown Printers (K) Limited, the Client. It is for professional fees for instruction in a transaction for sale of machinery, spares and accessories more particularly specified in a schedule to the Agreement at an agreed price of Kshs.21,000,000/-.

The Bill in 1401/07 relates to a Sale Agreement between Summir Enterprises Limited, the Vendors and Crown Printers & Stationers (Kenya) Limited, the Purchasers and is between the Advocate who is the Applicant and Crown Printers & Stationers (Kenya) Limited. The bill is for professional fees for instruction in a transaction for sale of machinery, spares and accessories, more particularly specified in the schedule to the agreement, at an agreed purchase price of Kshs.14,000,000/-.

Just to recap the Bill in the instant application is between the Advocate as Applicant and Crown Printers & Stationers (Kenya) Limited relating to a Sale Agreement between Sheth Agencies Limited and Summir Enterprises Limited as Vendors and Crown Printers & Stationers (Kenya) Limited as Purchasers. It is clear that the bill charges professional fees for instructions in a sale transaction between the said parties, for sale of LR. 209/10830/6 and all buildings, improvement thereon, all machineries, spares and accessories amounting to kshs.55,000,000/-.

I have scrutinized all the three Bills and find that in fact the Client in all the three is the same. The only difference between the Bills is that 1394/07 is instruction fees for sale of machinery, spares and accessories valued at Kshs.21,000,000/- while the one in 1401/07 is for instruction fees for sale of machinery spares and accessories valued at Kshs.14,000,000/-. The one in the instant suit is for sale of machinery, spares and accessories on land LR. 209/10830/6 together with the sale of the land and the buildings and improvements thereon. There is a definite duplication in all three Bill of Costs and I am satisfied that the Applicant is trying to have a second bite by filing this Bill of Costs. I am satisfied that the Advocate is claiming instruction fees severally for the same transaction. It is an abuse of the court process. The instruction fees for the sale of accessories, spares and machinery, having been between same parties ought to have been taxed as one bill. The bill in the instant application has merged instruction fees for sale of spares, machinery and accessories, which has already been taxed twice in 1394/07 and

1401/07, and the instruction fees for the sale of land and improvements thereon. Mr. Gikandi had difficulty trying to explain the difference between these Bills, because the difference is non-existent. The instant bill of costs is an abuse of the court process and is therefore struck out with costs to the Client.

Orders accordingly.

Dated at Nairobi, this 6th day of June, 2008.

LESIT, J.

JUDGE

Read, signed and delivered, in the presence of:

Mr. Gikandi for the Advocate/Applicant

Mr. Washe for the Client/Defendant

WARSAME

JUDGE