

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc 76 of 2006

RUSTAM HIRA.....PLAINTIFF

VERSUS

DELPHIS BANK LTD DEFENDANT

(NOW KNOWN AS ORIENTAL COMMERCIAL BANK LTD)

RULING

Notice of Motion dated 15.04.08 seeking Judgment in the sum of Kshs. 203,428.91.

This motion seeks to execute taxed bill of costs in that sum on the ground that there is no appeal against the taxation. And there has been no effort to pay. There is prayer for interest at the rate of 14 % p.a from the date of taxation. The applicant prays for Kshs. 10,000 /= costs which arose after taxation as further court fees.

I have examined the authority cited by Mr. Thuku Madzayo Mrima & Company Advocates –vs- Crown Printers & Stationers (K) Ltd. In that matter a client/Advocate bill taxed by the Taxing Master.

The Application was opposed. The Court, Hon. Justice Kimaru cited Court of Appeal decision *Sharma -vs- Uhuru Highway Development (2001) 2 E.A 530 and South Nyanza Sugar Co. Ltd. –vs- Ochillo, Civil Appeal No. 127 of 2003*, and ruled that for an Advocate to claim for a decree under taxation, he must file a plaint like other litigants. In this case there is opposition that an extra Kshs.10,000 /= has been added was not part of certificate of taxation and there is issue of rate of interest.

The Advocates Remuneration Order allows 9 % but application is seeking 14 % under the Civil Procedure Act section 27.

I say that two authorities Misc. 511 of 2004 and Misc.1458 of 2003 were delivered to court in the absence of opposed Counsel. I have not considered them.

In the view of the opposition and the Court of Appeal decisions above stated, I find that the application has not come to Court properly and the application incompetent. The same is dismissed with costs to the Respondent.

Orders accordingly.

DATED this 3rd day of November 2008.

JOYCE N. KHAMINWA

JUDGE