



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC CIV APPLI 784 OF 2004
KANYI J. & CO.PLAINTIFF

VERSUS

TRADE BANK LTD. (IN LIQUIDATION)DEFENDANTS

R U L I N G

This ruling relates to a dispute arising out of an advocate/client bill between Kanyi J & Co. Advocates and Trade Bank Ltd. (in liquidation). The dispute is expressed in a summons dated 1.12.05 taken out by Kanyi J & Co. Advocates pursuant to paragraph 11(2) of the Advocates (Remuneration) Order. The same was served upon the Deposit Protection Fund who saw no need to file any response to it hence the same was allowed to be prosecuted exparte.

The main ground raised by Miss Mango for the firm of Kanyi J. & Co. Advocates is that Miss Ndungu, the learned taxing officer failed in law and in fact when she refused to tax the advocate/client bill as required under schedule VII part B(a) of the Advocates (Remuneration) Order.

I have carefully considered the oral submissions of Miss Mango, learned counsel for the applicant. I have further taken into account the pleadings placed before this court. What emerges from the material placed before me is that party and party bill of costs between Trade Bank (in liquidation) and Hallmark Enterprises Ltd was taxed at 70,154 by consent on the 27th day of February 2004. The costs arose out of Mombasa H.C.C.C. No. 425 1995. Upon concluding the matter on behalf of Trade Bank Ltd (in Liquidation), Kanyi J & Co. Advocates then filed their advocate/client bill of costs. When the application came up for hearing before Miss Ndungu, the learned taxing officer, declined to tax the bill on the ground that the form of Kanyi J & Co. Advocates should have urged for their fee at the time of taxing party and party costs. I have carefully considered this reference and I think I agree with the submissions of Miss Mango that the learned taxing officer misapprehended the law when she refused to tax the bill. It should be made clear that party and party bill of costs are taxed differently from Advocate client bill of costs.

The two bills of costs cannot be taxed at the same time because of two reasons:

First, is that the advocate/client bill of costs is between an advocate or firm of advocates and a client(s). Secondly, the scales applicable in taxation are separately provided in the Advocates (Remuneration) Order. In the circumstances and for the above reasons, the order of Miss Ndungu of 11/8/2005 is set aside. The advocate/client bill of costs dated 21st October 2004 is reinstated and ordered to be taxed *denovo* before another taxing officer other than Miss Ndungu. Costs of the reference 0given to the applicant firm of advocates.

Dated and delivered at Mombasa this 21st day of February 2007.

J.K. SERGON

J U D G E

In open court in the absence of the parties with notice.