



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

MISC APPLI 258 OF 2005

CHOKAA & COMPANY, ADVOCATESAPPLICANT

V E R S U S

DEPOSIT PROTECTION FUND

(SUED AS THE LIQUIDATOR OF TRUST

BANK LIMITED-IN LIQUIDATION).....RESPONDENT

**(REFERENCE FROM TAXATION DATED 24TH NOVEMBER, 2005 OF AN ADVOCATE/
CLIENT BILL OF COSTS)**

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

This is a reference (by chamber summons dated 22nd May, 2006) under paragraph 11 of the Advocates (Remuneration) Order. It seeks an order to set aside the order of 24th November, 2005 by which the advocate/client bill of costs dated 7th and filed on 15th April, 2005 between the parties herein was taxed. It also seeks an order directing the taxing officer to tax the bill of costs “**as by law required**”. The application is made upon the grounds:-

1. That the taxing officer wrongly applied Schedule V, Part II, paragraph 1 of the Advocates (Remuneration) Order instead of Schedule I.
2. That the taxing officer failed to consider and appreciate the applicant’s submissions.

There is a supporting affidavit sworn by VINCENT CHOKAA, a partner in the applicant firm. I have read the same.

The Respondent has opposed the application as set out in the grounds of opposition dated 16th June, 2006. Those grounds are that the application is frivolous and unmeritorious, and that it amounts to an abuse of the process of the court.

I have considered the submissions of the learned counsels appearing, including the case cited. The dispute here is clear-cut. It is, which schedule of the Advocates (Remuneration) Order was applicable to the Applicant's advocate/client bill of costs dated 7th April, 2005? The Applicant's position is that Schedule I was applicable. The Respondent's position is that Schedule V was applicable. The taxing officer agreed with the Respondent.

The Applicant was instructed by the Respondent to draw a sale agreement for perusal by the purchaser's advocates and by the Respondent, and to-

“initiate the necessary conveyancing process with a view to having the sale transaction completed within the shortest time possible”.

The property concerned was L.R. No. 209/572 within Nairobi. The agreed fees **“for the above transaction”** payable to the Applicant, according to the instruction letter dated 20th July, 2004, was stated to have been agreed at KShs. 700,000/00.

It is beyond dispute that the sale never proceeded. The Applicant stated in its written submissions dated 10th November, 2005 before the taxing officer that:-

“As the purchasers failed to return the Sale Agreement and/or deposit/pay the agreed 10% of the purchase price the Applicant requested the Respondent to provide particulars of the second highest bidder in order to conclude the sale, but the request elicited no response ...”.

So, the only work the Applicant did was to draw the sale agreement.

It would appear that the Respondent refused to pay the KShs. 700,000/00 on the ground that the transaction was never completed, and the Applicant then filed his advocate/client bill of costs.

I have looked at both Schedules I and V of the Advocates (Remuneration) Order. The fee payable to a vendor's advocate under Schedule I, First Scale, paragraph 1 is:-

“For preparing and completing contract, answering any preliminary enquiries, deducing title (including any necessary abstraction to a freehold or leasehold property, answering any requisitions on title, perusing and completing conveyancing or assignment).”

In the present case, the Applicant only prepared the contract. He did not complete it; nor does he appear to have answered any preliminary enquires or deduce title. He did not peruse and complete any conveyance. So, he was not entitled to any fee under paragraph 1 of the First Scale of Schedule I, or under any of the other scales of that schedule. Schedule I simply does not provide for a fee for preparation only (without more) of the sale agreement.

Under what schedule, then, should the Applicant's bill of costs have been taxed? Schedule V provides for fees in respect of business the remuneration for which is not otherwise prescribed, or which has been the subject of an election under paragraph 22 of the Advocates (Remuneration) Order. There was no such election in this matter. I also find that the fee for drawing only a sale agreement (without more) is not otherwise prescribed. Taxation of such fee under Schedule V would therefore be appropriate.

The learned taxing officer was thus correct in taxing the bill under Part II of Schedule V. She was entitled, under paragraph 1 of that part, to award such fee for instructions as may be fair and reasonable,

“having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject-matter involved, the interest of the parties, the complexity of the matter, and all other circumstances of the case”.

She awarded Kshs. 200,000/00 for instruction fee. That was a fair and reasonable sum for drawing a sale agreement. Sale agreements normally follow a standard format, and the value of the property sold will

usually not influence such format.

There was thus no error of principle committed by the taxing officer, and I have no reason to interfere with her discretion. I find no merit in this reference, and I must refuse it. It is hereby dismissed with costs to the Respondent. There will be an order accordingly.

DATED AT NAIROBI THIS 11TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 14TH DAY OF SEPTEMBER, 2007