



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL CASE 369 OF 1999

TRUST BANK LIMITED (IN LIQUIDATION)..... PLAINTIFF

VERSUS

CUT TOBACCO (K) LIMITED.....1ST DEFENDANT

CHAITANYA SEVAK2ND DEFENDANT

RULING

By this Chamber Summons brought pursuant to paragraph 11 (2) of the Advocates (Remuneration) Order Cut Tobacco (K) Ltd and Chaitanya Sevak the defendants (hereinafter “*the objectors*”) seek the following primary order:-

That the costs allowed by the Deputy Registrar Miss E. N. Maina on taxation of the Bill of Costs filed in this suit by the Objectors against the Respondent on 18.1.2007 (“**the Bill**”) in respect of items 1 and 2 of the bill be reviewed and/or increased or remitted with appropriate directions to a Taxing Officer as the Court shall deem fit for reconsideration.

The grounds for the reference as expressed on the face of the Chamber Summons are as follows:-

- 1) That the Taxing Officer erred in failing to first ascertain the schedule applicable for instructions fees.
- 2) That the Taxing Officer erred in deciding that the subject matter of the suit was in monetary terms as set out in the bill of costs under item 1 and 2.
- 3) That the Taxing Officer erred in determining that the value of the subject matter of the suit was KShs.16,891,600/= or;
- 4) That such value was in any event ascertainable from the pleadings or judgment or;
- 5) That the instruction fees of KShs.308,374.00 and 265,000.00 allowed under items 1 and 2 respectively is so manifestly low that it indicates that the Taxing Officer has adopted wrong principles in the exercise of her discretion.
- 6) That the Taxing Officer erred by not accepting that the plaintiff’s claim for interest at 21% p.a. was part and parcel of plaintiff’s claim.

The application is not supported by any affidavit. Counsel for the objectors argued that interest was claimed by the plaintiff and was indeed mentioned in the judgment. Yet it was ignored by the Taxing Officer in her ruling on taxation. In counsel's view if the Taxing Officer had considered the element of interest she would have found that instructions fees awardable would have been much more than she awarded. Counsel submitted that if the plaintiff had succeeded, it would have been entitled to interest and by parity of reasoning, instructions fees should include that element. Failure to consider that element according to counsel, amounts to an error of principle committed by the Taxing Officer.

Counsel for the plaintiff has opposed the reference contending that the Taxing Officer committed no error of principle and indeed, if she had acted as argued by counsel for the objectors, he would have erred on principle. Counsel further argued that the larger figures referred to by counsel for the objectors were contained in exhibits produced in the suit and could not be the value of the subject matter for purposes of ascertaining instructions fees.

I have considered the application and counsel's submissions. I have also carefully read the ruling of the Taxing Officer on the taxation of the objectors' bill of costs. Having done so, I take the following view of the matter. The plaintiff claimed as against the 1st objector KShs.16,891,600.00 ***"together with interest at 21% p.a. from 1.3.1999 or such other rate as shall be prevailing when judgment is delivered until payment in full"***. As against the 2nd plaintiff (second objector), the plaintiff claimed KShs.14,000,000.00 ***"together with interest thereon at 21% p.a. from 12.3.1999 or at such other rate as shall be prevailing when judgment is delivered until payment in full."***

The suit was dismissed with costs to the defendant (**objectors**). The Taxing Officer ascertained the value of the subject matter to be the amount pleaded in the plaint. She specifically found that no interest was awarded on the principal sums. She accordingly concluded that that element of the plaintiff's claim did not constitute an aspect of the value of the subject matter. Her approach in my view was the proper one in law. The plaintiff claimed specific amounts together with interest. It is settled now that interest is at the discretion of the court. The Taxing Officer must have been fully alive to that discretion and concluded that an item that can only be allowed at the discretion of the court cannot constitute the value of the subject matter. I respectfully agree. To accept the argument made by counsel for the defendants' (**objectors**) would open wild claims in Bills of Costs that are based purely on interest. The court cannot legitimize such claims.

In the end, I cannot interfere with the Taxing Officer's decision on taxation, as I detect no error of principle. The objector's application dated 30.5.2007 is accordingly dismissed with costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF DECEMBER, 2007.

F. AZANGALALA

JUDGE

Read in the presence of:

Nyakena for the Respondent.

F. AZANGALALA

JUDGE

5/12/07