

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 683 of 2004

MOGO & NYAMOGO.....APPLICANT

VERSUS

KENYA BUS SERVICES LTD)

GEOFFREY NDOMBI ODUOR).....RESPONDENTS

RULING

The application seeks to set aside the Taxing Master's Order made on 3rd March 2005.

Thereafter the applicant urges that Item I of the applicant's bill be allowed at Shs.82,500/=.. The Taxing Master did not apply the correct principles in coming to a decision to reduce Item I of the instruction fee.

The Taxing Master is contended to have exercised the discretion given to her wrongly in taxing the fee of Ksh.52,500/= having regard to the nature of the appeal. This was an instruction fee on appeal. The basis up which the instruction fees are earned is that in considering what the award by way of instructions the Taxing Master must take into account the other fees and allowances, the nature and importance of the cause, the amount involved the interest of the parties, the general conduct of proceedings. instruction fee may be reduced in special circumstances. ***PATEL VS. BARCLAYS bank – 1959 EA 994.***

The Taxing Master has unfettered discretion whether to increase or reduce the basic instruction fees chargeable. All there is that relevant consideration must be taken into account. In ***PREMCHAD RAINCHAND LTD VS. QUARRY SERVICES OF EA LTD 1972 EA 162***, it was held that the court will only interfere when the award of the Taxing Master is so high or low as to amount to an injustice to one party. The issue therefore in these proceedings is whether in reducing the instruction fees from Shs.82,500/= to Shs.52,500/= amounted to an injustice of the applicant. It has not been shown that the Taxing Master applied wrong principles in coming to the decision to reduce the instruction fees from Shs.82,500/= to Shs.52,500/= but she did not give her reasons for the reduction. Though the Taxing Master was entitled to reduce the amount of instruction fees, the reduction effected was too high to result in an injustice to the applicant. Doing the best I can, Item I of the Bill of Costs is taxed at Shs.72,500/= instead of Shs.52,500/= given by the Taxing Master.

The other issue is interest on the taxed costs which was not granted by the Taxing Master. The advocate is allowed to charge interest at 9 per annum on his disbursements and costs whether by slate or otherwise from the expiration of one month from the delivery of this bill to the client provided such claims for interest is raised before the amount of the bill has been paid or tendered in full. See paragraph 7 of the Advocates (Remuneration) Order.

The applicant is entitled to charge interest as stated above and it is so ordered.

The orders of the Taxing Master are varied accordingly.

Dated and delivered at Nairobi this 27th day of February 2006.

J.L.A. OSIEMO

JUDGE