

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Appli 1090 of 2005

KAMUNYORI & CO. ADVOCATES.....PLAINTIFF

VERSUS

CANNON ASSURANCE (K) LIMITED.....DEFENDANT

RULING

The taxation of the advocates/client bill of cost was on 13th January 2006. The records shows that the taxing master recorded that the Respondent of the bill was served but was absent.

By an application dated 9th February 2006, the Respondent has filed a Notice of Motion seeking an order:

“That certificate of taxing officer dated 15th February, 2006 be set aside and the Respondent be given an opportunity to contest advocate- client bill of costs dated 6th December 2005.”

The Respondent’s counsel, Musembi Ndolo, swore the affidavit in support of that application. He deponed that, on 23rd December 2005, he wrote a letter, which was filed in court protesting on the date fixed for taxation on the basis that it was contrary to the Gazette Notice No. 9539 which notice stated the dates of the Christmas vacation. Respondent counsel deponed that it was illegal to proceed with the matter during the vacation particularly since he stated that his law firm would be closed.

The advocate who submitted in favour of the applicant argued that the applicant with the bill will not suffer prejudice if the certificate is set aside. Counsel relied on the High Court (practice and procedure) rules, of the Judicature Act.

Applicant opposed the application; firstly on the basis that the same had been brought, wrongly, under Section 51 (2) Cap 16; secondly on the basis vacation is for the benefit of the High Court judges, which does not include taxing officers. He further submitted that taxation is not a suit and that is accordingly not affected the vacation rules.

The High Court (Practice and Procedure) Rules affect the sittings of the High Court. Indeed Rule 1 (1) thereof state:

“The sitting of the High Court shall be three in every year.”

The rules then proceed to enumerate the different vacations at the High Court at Mombasa and also by the other High Courts.

Section 60 (1) of the Constitution of Kenya provides that there shall be a High Court. Section 60 (2) enumerates who are considered as High Court judges, that is the chief Justice and such other number of judges, not less than eleven.

The Constitution does not state that the taxing officer is a High Court Judge. Accordingly when he sits in taxation he does not sit as a High Court Judge. Accordingly The High Court vacation Rules do not apply to the taxing officer.

That as it may the counsel for the Respondent was served with the notice of taxation on 15th December 2005 for taxation on the 13th January 2006. The Respondent's counsel instead of attending to the taxation wrote to court objecting to the taxation on the basis that 13th January 2006 fell within the court vacation period and that, secondly, during that time the Respondent's counsel's legal firm was closed for holiday. What is surprising is that the Respondent counsel expected the court to act on his aforesaid letter. For the record let him note that the court practice is not conducted through correspondence. Indeed it was discourteous for counsel to dictate when a matter ought to be heard by the court through correspondence.

Needless to say the Respondent's application by Notice of Motion dated 9th February 2006 is dismissed and its costs thereof are awarded to the Applicant with the bill of costs.

MARY KASANGO

JUDGE

Dated and delivered this 8th June 2006.

MARY KASANGO

JUDGE