



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Misc Civ Appli 107 of 2003**

**IN THE MATTER OF: ADVOCATES REMUNERATION**

**ORDER**

**AND**

**IN THE MATTER OF: TAXATION OF COSTS IN**

**MOMBASA HIGH COURT MISC.**

**APPL. CASE NO. 236 OF 2000**

**ANIL SUCHAK =VS= WOOD HEDGES LIMITED**

**BETWEEN**

**ANIL SUCHAK .....APPLICANT**

**AND**

**WOOD HEDGES LIMITED .....RESPONDENT**

**RULING**

Pursuant to the provisions of paragraph 11 of the Advocates (Remuneration) Order Anil Suchak, the applicant herein sought to have part of the decision of the taxing officer of this court dated 24.1.2003 set aside with an order directing the Advocates/Client bill to be relaxed. Wood hedges Limited the Respondent herein, opposed the summons by filing grounds of opposition and a replying affidavit sworn by N.M. Doshi.

The background of this dispute can easily be deduced from the pleadings. By a plaint dated 5<sup>th</sup> February 1997, the Presbyterian Church of East Africa sued Wood Hedges Ltd. With the Attorney General claiming declaratory orders over a piece of land known as Mombasa/Block IX/237. Wood hedges Ltd, then instructed Anil Suchak Esquire Advocate to file a defence. It would appear the learned advocate dutifully took up the instructions and filed a comprehensive defence to the plaint. It is not clear at what stage Mr. Anil Suchak ceased acting for the defendant. However it is not disputed that the learned advocate filed advocate/client bill vide Mombasa H.C. Misc. Appl. No. 256 of 2000 ostensibly to determine his professional fees. The application was determined on 24.1.2003 by R. Ndubi Esq, the taxing officer of this court. Immediately the ruling on taxation was delivered the learned advocate pursuant to paragraph 11 (1) of the Advocates (Remuneration) order gave notice of objection to items

Nos. 17, 27 and 32. The taxing officer gave him the reasons for his decision on those items. On receipt of the aforesaid reasons the learned advocate filed the summons under para. 11(2), the subject matter of this ruling.

It is the submission of Mr. Anil Suchak that the taxing officer erred when he disallowed items nos. 27 and 32. The taxing officer was accused of ignoring a valuation report and of taking upon himself the duty to value of the subject matter. It is the argument of Mr. Suchak that the taxing officer should have taken into account the complexity of the matter. The learned advocate further accused Mr. Doshi of concealing from court the fact that there was an agreement on the value of the property yet he was duty bound to disclose that to enable the applicant ask for his rightful legal fees.

The reference is opposed by the Respondent. Mr. W.M. Doshi is of the view that the taxing officer should not be faulted because he applied the correct principles in the matter. The learned advocate conceded that he did not disclose the value settled by the parties because he was barred to do so by advocate/client confidentiality.

I have anxiously considered the submissions made by both sides. I have also perused the application plus the affidavits for and against it. Item No. 27 is in respect of instructions to draw requisite grounds of opposition, raising various issues for consideration by court when hearing the plaintiff's application for interim injunction.

Item No. 32 is in respect of instructions to draw a replying and set out facts raising various issues as to interalia competency of the suit, jurisdiction of court to make interim order of injunction, indefeasibility of the client's title, terms and conditions of certificate of lease. The taxing officer was of the view that these two items go together. He formed the opinion that the applicant cannot be paid twice on instructions fees. Mr. Suchak was of the view that these items should have been taxed separately. I agree with the submissions of Mr. Suchak that the grounds of opposition are distinct from affidavit. The taxing officer therefore erred.

The other item is No. 17 in which the learned advocate asked for instructions to defend suit. On this item the learned taxing officer rejected the valuation of Kshs.10 M presented by Mr. Suchak as the value of the property in dispute. The taxing officer's reasoning is that the learned advocate had specifically prepared the valuation for purposes of the taxation. The learned taxing officer then proceeded to give an estimated value of the property at Kshs.2,000,000/- and on that basis he taxed the instructions fess at Kshs.50,000/- by taking off Kshs.88,500/- from the figure prayed of Kshs.138,500/-. It is the submission of Mr. Suchak that the learned taxing officer erred when he purported to give an estimated value instead of looking at the valuation report he had filed. It is his argument that the trial court should have considered the complexity of the matter and the amount of settlement if any.

The applicant accused the respondent of suppressing the agreed settlement value of Kshs.7,000,000/-. I have carefully considered these arguments. The taxing officer of this court cannot be faulted on the holding that there was no value attached to the property. However there was no discretion for the taxing officer to give an estimate value of the property. The taxing officer is required by law in defended actions to consider the importance of the action the interest of the parties, the general conduct of the proceedings. Of course the taxing officer was right when he rejected the value presented by the applicant. There is an admission that the matter was settled with an ascertained value of the property. That fact was within the knowledge of the Respondent and his advocate while the application on taxation was still pending. The same was concealed from the taxing officer on the basis of client/advocate confidentiality. I do not know how Mr. Anil Suchak managed to secure the sale agreement between the Respondent and P.C.E.A., however, it is not denied by Mr. Doshi that such an agreement exists.

For the foregoing reasons I am convinced that the chamber summons dated 18<sup>th</sup> February 2003 is well founded. The taxing officer's decision of 24.1.2003 is set aside and the advocate/client bill of 22.9.2000 is to be re-taxed by another taxing officer other than R. Ndubi Esquire.

Costs of the summons is payable to the applicant.

**Dated and delivered at Mombasa this 4th day of October, 2006.**

J.K. SERGON

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