

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

Civil Suit 516 of 1999

KENYA REINSURANCE CORPORATION LTD.....PLAINTIFF

VERSUS

JUSTUS GACHIMU NGUNIA1ST DEFENDANT

PHILLIS NYAMBURA2ND DEFENDANT

RULING

Taxation in respect of the 2nd defendants Bill of Costs dated 7th July 2005 was undertaken on the 9th of March 2006. On the 13th of March 2006 the Plaintiff informed the Deputy Registrar by a letter that they objected to the taxation of all items. They in that letter requested for reasons for the purpose of filing a reference. Because of the danger that they faced of execution for the taxed cost by the 2nd defendant the plaintiff filed a Notice of Motion dated 30th March 2006. In that application the plaintiff sought pending the lodging of a reference that they be stayed of execution of those costs, in the alternative the plaintiff prayed that the ruling of the taxing master of 9th March 2006 be set aside and the 2nd defendants Bill of Costs be remitted back for taxation afresh. When this matter came up for hearing on the 2nd November 2006 the plaintiff proceeded with both prayers in the Notice of Motion. It is however important to note that the plaintiff received a copy of the taxing masters reasons on 21st of July 2006. As required by Rule 11 of the Advocates (Remuneration) Order the plaintiff should have filed its reference within 14 days of receipt of reasons. The application was objected to by the 2nd defendant on the basis that there being no reference within that time frame, stay could not be granted as sought. The court has noted that objection but since the Plaintiff by their present Notice of Motion do seek in the alternative that the taxation be set aside the court finds that the application is not incompetent. What however the court does not consider necessary to go through is in regard to the prayer for stay. The court will confine itself to the prayer to set aside the order of taxation of 9th March 2006. The affidavit in support of that application has very few paragraphs which relate to the prayer that the court intends to look at. The plaintiff by that affidavit stated that the taxing master applied the wrong principle in arriving at the instructions fees awarded to the 2nd defendant. The item on instructions fees in the Bill of Costs is item No 33. Looking at that item the 2nd defendant in arriving at instruction fees used the amount pleaded in the amended plaint, that is kshs 817, 109. 30. The court was some how confused by the plaintiff counsel submissions because in support of that ground he submitted that the 2nd defendant had based instructions fees on the amount of judgment that is kshs 1, 417, 109/- rather than using the amount claimed in the amended plaint. I have perused the taxing masters reasons and in regard to item 33 I find that the taxing master used the figure shown in the amended plaint and thereof taxed off the amount of kshs 70, 000/-. It is therefore not correct to say that the taxing master relied on the judgment amount in taxing the instruction fee. The plaintiff further argued that the 2nd defendant was not entitled to the getting up fees of kshs 50, 000/- and the reason given by the plaintiff was because the 2nd defendant was said to have not participated in the hearing. I have looked at the proceedings of that day that is, of 31st October 2003 and I note that the matter was coming up for full hearing before the Honourable Justice Mutungi and I note that the 2nd defendant was represented by counsel. This date had been fixed exparte by the plaintiff. It is not apparent from the court record how the 2nd defendant got to know of the hearing of that day. She was however represented on that day. The

case did not proceed for hearing because the court was of the view that it was not a suitable matter to be heard on Friday. Parties were ordered to take a fresh date. It is not correct to say that the 2nd defendant would not be entitled to the getting up fees because they did not participate in the hearing the fact is that since the case was fixed for hearing the 2nd defendant was entitled to getting up fees. That objection therefore of the taxation of item No. 50 is rejected by the court. Those were the only two items that the plaintiff raised with regard to the 2nd defendant Bill of Cost. The court having rejected the objection raised the end result would be the plaintiff Notice of Motion dated 30th of March 2006 will be and is hereby dismissed with costs to the 2nd defendant.

Orders accordingly.

MARY KASANGO

JUDGE

Dated and delivered this 30th day of November 2006.

MARY KASANGO

JUDGE