

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 513 of 1999

PETER WAMBUGU KARIUKI APPELLANT

VERSUS

JUSTUS WERU NGARUCHI 1ST RESPONDENT

MARION WANJIRA WERU 2ND RESPONDENT

EMILY WANGUI WERU 3RD RESPONDENT

RULING

This is a reference to this Court from a decision of the Taxing Officer on the Respondent's bill of costs which was taxed at Kshs.78,695/=. The main item of contention is the instruction fees which was taxed at Kshs.50,000/=. There are also several small items in dispute.

The litigation in the lower court arose out of a marriage that failed to take place, and for recovery of certain funds paid in anticipation of marriage. The Appellant's application to strike out the defence was disallowed by the lower court. He appealed against that decision to the High Court, and the same was disallowed, resulting in the taxation of the Respondent's bill of costs.

The item for instruction fees was charged at Kshs.105,000/=: which the Taxing Officer conceded was on the high side. He reduced it to Kshs.50,000/= although the minimum provided for in the Advocates (Remuneration) Amendment Order, 1997 Schedule VI, is Kshs.35,000/=. His reasons for allowing a much higher sum of Kshs.50,000/= was that "**this matter involved unique issues on traditional (customary) marriages raising issues of customary law and English common law**". The Applicant has argued before me that there was nothing unique here, and the instruction fee of Kshs.50,000/= was too high. He relied on the cases of *First American Bank of Kenya vs Gulab P. Shah (HCCC No. 2255 of 2000, Milimani)*, and *Wambugu & Company vs Savings & Loan Kenya Limited (HC Misc. C A 464 of 2004, Milimani)*.

Having reviewed the pleadings, I agree with the Applicant. There is nothing unique in this case. There are no issues of traditional marriages or customary law that needed to be considered. Indeed the marriage never took place. This was a straight forward claim for recovery of moneys paid in anticipation of marriage. And the application before the lower court, which gave rise to this appeal, was also an equally straight forward application to strike out the defence. I cannot see any justification to award a fee higher than the minimum prescribed.

I am well aware of the discretion given to the Taxing Officer in taxation matters, and that this court should only interfere with that discretion if there was an error in principle, or if the sum arrived at was either so high or so low as to imply that the taxing officer applied the wrong principles. I am satisfied that such is the case here, and accordingly I hereby set aside the award of Kshs.50,000/= for instruction fees, and substitute the same with an award of Kshs.35,000/=.

With regard to the other small items, I do not see the need to interfere with the taxing officer's discretion. There is no serious error of principle.

Accordingly, as this application succeeds only in part, I order that each party bears its own costs.

Dated and delivered at Nairobi this 22nd day of November, 2006.

ALNASHIR VISRAM

JUDGE