



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

**Civil Case 450 of 1999**

**MOHAMMED ELTAF .....1<sup>ST</sup> PLAINTIFF**

**SAGA SAFARIS LIMITED.....2<sup>ND</sup> PLAINTIFF**

**SAGA TRAVEL AND SAFARIS A.B. ....3<sup>RD</sup> PLAINTIFF**

**TOURS AFRICA SAFARIS LIMITED.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**DREAM CAMP KENYA LIMITED.....DEFENDANT**

**RULING**

This application has been brought under the provisions of paragraph 11(2) of the Advocates **(Remuneration)** Order. It is by the defendant and is by way of reference from an order on taxation made by the Taxing Officer on 7.2.2002. The defendant objects to the decision of the Taxing Officer in respect of items 1, 2, 6, 7 and 8 of the defendant’s bill of costs on the following primary grounds:

- 1) That the taxation of items 1, 2, 6, 7 and 8 of the said Bill of Costs dated 19.4.2001 was manifestly excessive, unreasonable and lacking basis in fact and law.
- 2) That in arriving at her decision on the taxation of the said items the Learned Taxing Officer misdirected herself in that
  - (i) She erred in determining that the issues in the suit were not of a complex nature;
  - (ii) She erred in failing to appreciate and consider that the trial of the suit was lengthy and involved a large amount of complex documentary and oral evidence.
  - (iii) She erred in failing to consider and take into account the value of the defendant’s investment of approximately U.S.D.500,000.00 in the property and business forming the subject matter of this suit.
  - (iv) She erred in failing to consider and take into account the risk to the defendant’s business and investment posed by the plaintiffs’ suit and interlocutory application.
  - (v) She erred in failing to take into account and consider the oral submissions made by learned counsel for the defendant in support of the Bill of Costs.

(vi) She erred in failing to take into account and consider the significance of the absence of the plaintiffs or their counsel at the Taxation.

The application was opposed on the basis of Grounds of Opposition filed on 14.2.2006 in which it is contended that the application is incompetent and fatally defective; that the Taxing Officer took into consideration all material factors and that no valid reasons or grounds have been adduced which would warrant interference with the Taxing Officer's award. The application was canvassed before me on 3.10.2006 by Mr. Amin Learned counsel for the defendant and Mr. Katiku Learned counsel for the plaintiff. In his oral submissions in court counsel for the defendant elaborated on the grounds in the reference and emphasized that the issues in dispute in the suit were of a complex nature touching on Company Law, fraud, agency, breach of contract and duress and a 21 page judgment was evidence of the complexity of the matter. With respect to the getting up fee awarded counsel argued that the Taxing Officer erred in considering only the basic minimum. Reliance was placed upon the decision of this court in **Green Hills Investments Limited – vs – China National Complete Plant Export Corporation – HCCC No.572 of 2000** in which Ibrahim J found as excessively low the sum awarded by the Taxing Officer and was inexplicable and disproportionate to the work done. In the premises, counsel for the defendant submitted that the Taxing Officer failed to exercise her discretion in a judicious fair and reasonable manner.

Counsel for the plaintiff on his part did not see any failure on the part of the Taxing Officer and referred to her ruling arguing that the Learned Taxing Officer had dealt with all the issues raised by Counsel for the defendant. In Counsel's view the case relied upon by the defendant's counsel supports the plaintiff's position. He contended that the Taxing Officer had properly exercised her discretion especially as no value was placed upon the plaintiff's claim which only involved injunctive reliefs. In the premises, he urged me to refuse the reference.

I have now considered the application, the Grounds of Opposition and the submissions made to me by counsel. Having done so I take the following view of the matter. On the competence of the reference, counsel for the plaintiff did not address this ground and for good reason, as I have not seen any basis for the complaint. Turning now to the merits or demerits of the reference I have found as follows: The value of the subject matter could not be ascertained from the pleadings or judgment. Indeed the Learned Taxing Officer found that **“there was no specific figure claimed. No specific figure was given in judgment.”**

The Taxing Officer therefore exercised her discretion given her in paragraph 1 of Schedule VIA of the Advocates (**Remuneration**) Order which reads as follows:-

**“The fee for instructions in suits shall be as follows, unless the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it”**

Proviso (i) to Schedule VIA (i) is as follows:-

**“the taxing officer in the exercise of his discretion, shall take into consideration the other fees and allowances to the advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the trial judge, and all other relevant circumstance.”**

The Taxing Officer found with respect to instructions fee that the case was a fairly straight forward one. The issues were not complex. Neither did the case require any special skills. She also considered the amount of work put in by counsel. She then awarded KShs.150,000/= as instruction fee. I am afraid, I detect no error of principle on the part of the Taxing Officer nor can I say she improperly exercised her discretion.

With respect to item 2, the Taxing Officer found that the same was a duplication of item (1) and on item 6 she awarded 1/3<sup>rd</sup> of item 1 and item 7 was taxed at KShs.525.00 while item 8 was disallowed

altogether. I have perused the reasons for the taxation given by the Taxing Officer. She applied the correct schedule and gave sound reasons as to why she allowed the minimum fees awardable with respect to items 6 and 7 of the Bill of Costs. I do not detect any error in the exercise of her discretion. I have not been able to find any other misdirection on her part. In my view the decision of Ibrahim J in **Green Hills Investments Limited – vs – China National Complete Plant Export Corporation (Supra)** applied to different circumstances. In that case, the Learned Judge found that the Taxing Officer had not appreciated that the issues of Law and fact involved in the case were complex and intricate. He also found that the Taxing Officer's taxation was inexplicable and disproportionate to the work done. Those circumstances do not obtain in the matter at hand where the Taxing Officer was in no doubt that the issues were not complex nor did the case require any special skills notwithstanding that the trial took 10 days.

In the result I decline to interfere with the decision of the Taxing Officer. The Defendant's application dated 8.3.2002 and filed on the same date is without merit and I dismiss it with costs.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2006.**

**F. AZANGALALA**

**JUDGE**

**2.11.2006**

Read in the presence of:-