

REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MISC. APPLICATION NO. 260 OF 2003

SHAH & PAREKH ADVOCATES..... PLAINTIFF

VERSUS

APOLLO INSURANCE CO. LTD DEFENDANT

RULING

By a Chamber Summons dated 1st April 2004 the Applicant herein requests the Court to interfere with the taxation done on 19th June 2003 and the subsequent Ruling of the taxing officer dated 26.06.03, to set aside the taxation and to refer the matter back to the taxing officer “with proper directions on the taxation thereof.”

The Applicant complains that there having been no suit (read plaint) filed, schedule VI adopted by the taxing officer did not apply. The Applicant argues that the taxing officer acted “in excess of” her discretion and abused the same, misdirected herself and committed errors in principle by so acting “in excess of her discretion” and contrary to well established legal principles. I note that the Applicant has no complaint about the figure allowed in the taxation. Despite reasons having not been obtained I find that the same were sufficiently provided for in the Ruling of 26.06.03 and do consider the application appropriate for my consideration and determination.

It does not strike me as surprising that an application such as this has been would be filed since the provisions of Schedule VI (a) and (b) are very clear as applying to (in respect of (a)

“any proceedings (whether commenced by plaint, originating summons or notice of motion) where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties.....”

and (in respect of (b))

“.....any proceedings described in (a) where the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties.....”

Although the parent file was not presented before the Court for perusal, it is clear from the record that although no plaint was filed, an application by Originating Summons was filed in Court with a quantified claim of Shs.485,300/=, which from the submissions before the taxing officer, was settled amicably through negotiations. Clearly either schedule VI (a) or (b) would apply herein depending on whether the Originating Summons was defended or not. The schedule talks of any proceedings not suit.

In the premises I find that the Principal Deputy Registrar was wrong in applying Schedule VI L and do allow this application. The matter is referred back to the taxing officer for reconsideration as prayed. Costs to the Applicants.

Dated and Delivered at Nairobi this 21st day of January 2005

M.G. Mugo

Judge

In the presence of:

Mr. Mutua present for the Applicant

Mr. Tiego present for the Respondent