

IN THE HIGH COURT OF KENYA AT NAIROBI

Misc Application 22 of 2005

CONSOLIDATED WITH

Misc Application 23 of 2005

C.O. K'OPERE & COMPANY ADVOCATESPLAITNIFF

VERSUS

COUNTRYSIDE SUPPLIERS LTD

JOHN M.N. MUTUTHO RESPONDENTS

RULING

The Reference from the decision of the Taxing Officer in Misc. Application Nos. 22 and 23 of 2005 were brought before me. The two matters involved the same point namely, was the sum awarded in the two bills filed in each cause manifestly excessive, inadequate or correct so far as item 1 of each bill was concerned. The items in question relate to the instruction fee charged by the advocate in both cases.

In Misc. Application No.22 of 2005 the amount claimed was Shs.1,500,000/= from which the Taxing Officer taxed off Shs.1,300,000/=.

The instructions of the advocate were to file a libel suit. In her ruling the Taxing Officer found that the value of the subject matter could not be ascertained from the pleadings and determined that the proper schedule for determining the instruction fee was schedule VI (1) which has a basic fee of Shs.6000/=. She considered Shs.200,000/= a reasonable fee. Nothing has been shown to me to say that she exercised her discretion wrongly. The Taxing Officer had the original file before her and was in a position to determine the instruction fee from the papers before her. In the result I decline to interfere with her discretion and dismiss this reference with costs to the Respondent.

In Misc. Application NO.23 of 2005 the only item challenged in the reference is item 1 which is the instruction fee. The advocates claimed Shs.350,000/= and the Taxing Officer taxed of Kshs.300,000/=

In her ruling the Taxing Officer found that the instruction fee was to be complied by Schedule VI 1 (1) and that 50,000/= was a reasonable instruction fee. She had perused the main file and pleadings. No good reason has been advanced to me as to why I should interfere with the Taxing Officer's discretion. I do not see that she has acted in some wrong principle or that the sum awarded is manifestly inadequate.

In the result I dismiss this reference with costs to the Respondent.

Dated and delivered at Nairobi this 23rd day of June, 2005

P.J. RANSLEY

JUDGE