REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

Misc Cause 1109 of 2003

KIPKORIR, TITOO & KIARA ADVOCATES ……..…..….. APPLICANT

VERSUS

POSTAL CORPORATION OF KENYA ……...……. RESPONDENT

RULING

The only issue before this Court, in this objection from a taxation application dated 6th July, 2005, is the "instruction fee" of Kshs.3 million awarded to the Applicant/Advocate in respect of a libel suit filed by the Advocate pursuant to the client's/Respondent's instructions. The suit, I believe, is still pending in court. However, the client withdrew the services of the advocate after the close of the pleadings, whereupon the client sought to have his bill of costs taxed. The taxation proceeded before Hon. M. Muya, S. P. D. R. and in a fairly comprehensive and well-reasoned ruling, he reduced the instruction fee from Kshs.97,555,000/= to Kshs.3 million. It is against that decision that this objection has been preferred.

In his submissions before this Court, Mr Ogunde, Counsel for the Applicant, argued that in reducing the instruction fee from Kshs.97.55 million to Kshs.3 million the taxing officer erred in not appreciating that this was not just a simple defamation case; that this case "went to the root of the respondent's business"; that it was "a debate on the business and reputation of the postal corporation …" and, therefore, the instruction fee of Kshs.97 million plus was justified. To me, these arguments are all hyperbole, and completely without merit. I have carefully looked at the Plaint, and evaluated the work done by the Applicant advocates, and I completely agree with Dr Kiplagat, Counsel for the Respondent, that this is a simple defamation case – and nothing more.

Now, let us look at the Plaint in a little more detail to understand the nature of this case.The Plaint, filed on behalf of the respondent corporation, names the Nation Media Group Ltd and its six senior personnel as defendants. Of the 21 paragraphs in the Plaint, covering less than six pages, the first 10 are descriptive of the parties. One paragraph is factual in its description of the alleged defamation; six explain why and how the words complained of were meant to injure reputation, and the remaining four paragraphs are of a formal nature. The prayers sought are for permanent injunction and general and exemplary damages.

Now, to me, that is a normal, simple, straightforward defamation suit – nothing more, nothing less. There is nothing in this Plaint about the hyperbole the applicant's counsel now unleashes regarding the huge loss of Kshs.941,450,000/= and the decline in business (paragraphs 8 and 9 of the supporting affidavit), arising out of the alleged defamation.These claims, if anywhere near truth, are in the nature of special damages, and ought to have been pleaded. There is no pleading and no such claim in the Plaint. The parties to litigation are bound by their pleadings, and cannot now begin to invent imaginary claims to justify a staggering sum in legal fees.

So, did the taxing officer apply the correct principles in arriving at his decision to tax off Kshs.94 million in instructions fees? The taxing officer's Ruling of 5th March, 2004 is, as I said at the beginning, comprehensive and well-reasoned. Here is what he said:

> ***"The applicable provision is Schedule VI (1) (L) which provides:- To sue or defend in any case not provided for above, such sum as may be reasonable but not less than Kshs.6,000/=. Kshs.6,000/= is the minimum allowable fees chargeable. The issues for my determination among others are the nature and importance of the cause or matter, the amount or the value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and***

any other relevant factors.

… Further what was at stake in the present suit was not the Postal Corporation itself but a suit for libel. Postal Corporation of Kenya was not grounded by the libel, if any, as it is still in operation".

The taxing officer correctly applied the principles set out in ***Joreth Ltd vs Kigano (EALR 2002) 93*** in arriving at his decision. There is nothing on the face of this Plaint from which I can conclude that this case is so exceptional that the taxing officer must have acted on the wrong principle. If there is no error of principle, as I find that there is none here, it is not for me to interfere with the quantum of the award (See **Hasham Kara vs Abdul Mohamed Hussein Karmati (1946 – 7) 22 KLR 1.**

I will, therefore, not interfere with his decision, but to simply comment that in my view even the award of Kshs.3 million (let alone the colossal claim of Kshs.97 million) for instruction fee was overly generous. I will leave it at that.

Accordingly, this application is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 29th day of November, 2005.

ALNASHIR VISRAM

JUDGE