

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

Misc Appli 947 of 2002

MEENYE & KIRIMA ADVOCATES.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....DEFENDANT

RULING

The client, in the bill of costs, has applied by chamber summons seeking that the ruling and or order and or decision delivered on 30th June 2003, taxing the Advocate's bill of costs at kshs 67, 981. 10 be quashed and or set aside. Alternatively the client seeks that the bill be dismissed with costs. In further alternative, the client seeks the bill be freshly taxed. The client has come under Rule 11 (2) of the Advocate's (Remuneration) order and section 51 of the Advocates Act.

The grounds relied upon by the client, are that, the taxing master failed to deduct the sum paid by the client to the advocate of kshs 132, 375, that in so failing the taxing master failed to appreciate that the certificate of costs should reflect the final figure; that the taxing master failed to accept the client's written submissions; that the taxing master erred in an increment by half under schedule V.

The advocate, in response relied on the affidavit filed in reply, which essentially stated that the advocate was satisfied with the reasons given by the taxing master and pointed out that the taxing master considered the submissions of both parties.

I have considered counsel's arguments before me and I have considered both the ruling and the reasons for the ruling of the taxing master. In all I consider that the client is entitled to the prayer that the bill be freshly taxed. I do not wish to deal with all the issues raised by the client but I would state that it is clear that the taxing master did not take into account the payments made by the client to the advocate, which has not been denied by the advocate.

It was imperative for the taxing master to so consider those payments because section 51 Advocate's Act provides that in case of an Advocates bill of costs a certificate of the taxing master shall be final, unless set aside.

I also find that schedule V does not allow the increment by half of the costs.

The V.A.T undoubtedly ought to be reduced to reflect the amount awarded.

I will, in view of the above findings grant the following orders: -

(1) That the bill of costs herein, dated 26th August 2002, be and hereby remitted to the Deputy Registrar for fresh taxation.

(2) That the costs of the application dated 14th August 2003 to be in the cause.

Dated and delivered this 1st day of November 2005.

MARY KASANGO

JUDGE