

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Misc Civ Cause 127 of 2002

KENFIT LIMITED APPLICANT

VERSUS

CONSOLATA FATHERS RESPONDENT

RULING

In this application dated 17th December, 2004, the Applicant seeks to set aside the Ruling of the Taxing Officer delivered on 8th December, 2004 relating to items 2 and 13 of the Respondent's Bill of Costs.

The parties hereto submitted themselves to Arbitration. The same was heard, determined and the Award was issued. The Applicant then filed an application dated 8th February, 2002 under Section 36 (1) of the Arbitration Act, 1995 "seeking an order to enter Judgment in favour of the Applicant in terms of the Arbitration Award".

That was a simple "application" brought by way of a Notice of Motion. I have deliberately put the word application in quotes because that is exactly what it was – an "application", not a suit. When that application was eventually withdrawn with costs to the Respondent, the latter proceeded to tax its bill of costs, in which it claimed Kshs.150,817.85 for "instructions for opposing the suit", and Kshs.50,273/= for "getting up" fees.

The Taxing Officer went ahead and awarded both these items, albeit at slightly reduced sums as if this was a "suit", and as if she was taxing a bill arising out of a "suit". She erred hugely in the process, as both awards are inordinately high and completely unwarranted. There was no suit – only an application to enter Judgment.

I am satisfied that the Taxing Officer here acted on wrong principles, and arrived at the wrong decision. This application dated 17th December, 2004 is allowed with costs, and I order that the aforesaid items 2 and 13 be taxed again applying the correct principles.

Dated and delivered at Nairobi this 7th day of December, 2005.

ALNASHIR VISRAM

JUDGE