



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**CIVIL MISCELLANEOUS APPLICATION NO. 118 OF 2003**

**WANGA & COMPANY ADVOCATES ..... APPLICANT**

**VERSUS**

**BUSIA SUGAR COMPANY LIMITED ..... RESPONDENT**

**RULING**

The matter at hand is a chamber summons filed pursuant to paragraph 11(1) and (2) of the Advocates Remuneration Order in which the applicant sought to have the taxing officer's orders of 24th July 2003 varied and or set aside. The applicant also sought for an alternative prayer for the aforesaid order to be set aside and thereafter remitted back for taxation according to schedule V of the Advocates Remuneration Order. The applicant further prayed for costs of the reference. The summons is supported by the affidavit of Francis Wanga Ong'ong'a sworn on 20<sup>th</sup> August 2003.

The respondent resisted the summons by filing grounds of opposition dated 24th September 2003.

The main contention put forward by the applicant is that the taxing officer erred in failing to appreciate the meaning of paragraph 49 A of the Advocates Remuneration Order.

Secondly the applicant accused the taxing officer for failing to tax each item presented to her as required by law. It is submitted that the taxing officer gave a global figure which had no basis in law which figure is said to be inordinately low.

The respondent is of the view that the summons is premature because the taxing officer did not give reasons as expected by the law.

The respondent further submitted that the global figure awarded by the taxing officer is adequate and should not be disturbed.

The brief facts of this case is that the firm of Wanga & Co Advocates were engaged by the Respondent to appear on its behalf and on behalf of one Ernest Okoyo, their employee as a driver of Motor tractor reg No KAB 938 S in a traffic case in which the later was charged with causing death by dangerous driving. He successfully appealed and the respondent's employee was set free by the High Court vide Bungoma HC Criminal Appeal No. 28 of 2003.

The applicant firm of advocates had their costs taxed before the taxing officer Busia at a global sum of Ksh 85,000/=. Being dissatisfied with the taxing officer's decision the applicant gave notice to the taxing officer to give her reasons. The aforesaid officer abided by the notice and gave her reasons in her letter

dated 13th August 2003 which read as follows:

“I have received your letter dated 23.7.2003. My reasons are contained in the ruling dated 24.7.2003. Ruling is hereby attached”

Pursuant to receiving this letter the applicant’s firm of advocates filed this summons.

Three issues have arisen from the pleadings and the submissions of the learned counsels in this matter.

The first is whether the taxing officer gave reasons as required under the Advocates Remuneration Order.

The respondent is of the view that the taxing officer did not give reasons hence this reference is incompetent.

It is trite law that this court’s jurisdiction can only be exercised after the taxing officer has given reasons for his or her decision pursuant to paragraph 11 (2) of the Advocates Remuneration Order. I have perused the letter purported by the taxing officer to contain the reasons for her decision. What I can state is that it is always desirable for the taxing officer to state his or her reasons in her letter. It is not just enough to state that the reasons are contained in the ruling. The reasons given are not sufficient. However the crux of the matter is that the letter satisfies the requirement of paragraph 11 (2) of the Advocates Remuneration Order. In my humble view the lack of reasons in the taxing officer’s letter does not render the summons incompetent. Hence the respondent’s objection is overruled.

The above finding leads me to the second issue which arose. That is to say whether the taxing officer erred in principle when making her decision. The taxing officer gave a global figure of Ksh 85,000 being taxed costs in this matter without considering each and every item presented to her. This is contrary to the provisions of the Advocates Remuneration Order. The taxing officer is required to tax item by item. She therefore erred in principle.

The third issue which arose is whether the taxing officer appreciated the law governing taxation in criminal cases. It is important to refer to the remarks contained in her ruling in which she said:

“I must also admit that the Advocates Remuneration Order is silent on Criminal Costs and the advocate has not guided the Court by quoting any authority or any schedules in the Advocates Remuneration Order which are applicable in criminal matters.”

It is a cardinal principle in law that the Court is presumed to know the law. It is always incumbent upon the parties to lay bare the facts of their cases. The taxing officer obviously failed to appreciate the provisions of paragraph 49 A of the Advocates Remuneration Order which provides:

“Costs in criminal cases, whether in the High Court or subordinate courts if not agreed or ordered, shall be taxed as between advocate and client under schedule V.”

It is clear that the law is not silent nor ambiguous as portrayed.

On a parting note, it should be understood that the High Court can only interfere with the taxing officer’s decision on taxation if it is shown that an error of principle has been committed or that the award is manifestly excessive or inordinately low in the circumstances of each case.

The upshot therefore is that the summons is allowed as prayed. Consequently the decision of the taxing officer dated 24th July 2003 is set aside. The same is referred back to be taxed before another taxing officer according to law. Costs of this application is awarded to the applicant.

**Dated and Delivered at Busia this 8th day of May 2004.**

**J.K.SERGON**

**JUDGE**