

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 569 OF 2000

SALT MANUFACTURERS (K) LTD.....PLAINTIFF
=V E R S U S=
1.PAN AFRICAN CREDIT & FINANCE LTD.....1ST DEFENDANT
2.G.N. MBURU T.A. HAKI TRADERS.....2ND DEFENDANT
3.HAMILTON, HARRISON & MATHEWS.....3RD DEFENDANT

R U L I N G

By application filed on 20/8/03 the Applicant questions the powers of Taxing Officer by reducing the instruction fee from the scale fee of Kshs.2 Million to Kshs.1.5 Million.

The Applicant submits that the Trial Magistrate has no discretion to so reduce the minimum fee under the item instructions fee.

In her reasons for reducing the scale fee was on the ground that she exercised her discretion to reduce the fee by Kshs.500,000/- since the suit was terminated in its early stages and the amount of work involved was minimal. She quoted Schedule 6(1).

A perusal of the Schedule referred to shows that Taxing Officer has discretion to increase or decrease (unless otherwise provided). The discretion of the Officer is to be exercised judicially. That the suit was finalized at an early stge is not a reason to invoke discretion. It is shown that the details of instruction and value of subject-matter was clearly set out. The instruction fee was correctly assessed.

Fees for other work done is itemized thereafter separately. By reducing the Bill by Kshs.500,000/- the Officer was in reality not allowing any payments for other work done.

The Remuneration Order is made to ensure that Advocates earn a fair living for the service they give to members of public. It is only fair that unless there is good reason to reduce the scale fee the scale should be adhered to.

In this matter I do not find that the Taxing Officer exercised her discretion judicially.

I therefore set aside the decision to reduce the scale fee by Kshs.500,000/-. The instruction fee shall remain as Kshs.2,000,000/- and the other items shall be reduced by 8,890.50/-

Orders accordingly.

Dated at Mombasa this 21st day of July, 2004.

JOYCE KHAMINWA

J U D G E