

IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO.1571 OF 1995

KAMAU RUGU PLAINTIFF
VERSUS
JOHN CHEGE KUBAI DEFENDANT

RULING

This application has been brought under Order IXB Rule 8, Order XXI Rule 22 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all other enabling provisions of the law. In it the applicant seeks orders as follows:

1. That the Deputy Registrar's order of 9th December 2003 made during the taxation of a party and party Bill of Costs herein be set aside
2. That the execution of a decree issued on 8th July 2002 be stayed.
3. That costs of the application be provided for.

The Respondents have challenged the jurisdiction of this court to hear this application in view of the provisions of Rule 11 of the Advocates remuneration Order which provides for the procedure to be followed where a party wishes to object to a decision by the taxing officer. I share the Respondents concern as to whether the provisions of Order IXB have been properly invoked herein but will disregard the same in view of the fact that Section 3A of the Civil Procedure Act and ALL other enabling provisions of the law have additionally been invoked. I believe that the reason for invoking Order and XXI rule 22 is that the Applicant seeks to stay execution which he could not do under Rule 11 of the Remuneration Order. Be that as it may, I take the view that what this court is being called upon to do is to scrutinize the decree issued herein and to find whether or not the Taxing Officer's action in taxing the Bill herein was in conformity with the same.

It is quite clear from the decree annexed to the application as annexure 'A' provided that

“ (b) ... the Defendant do pay the Plaintiff the costs of this suit at lower Court scale.”

The instruction fee as per item 1 of the bill taxed herein being Shs.55,000/= is clearly based on schedule VI of the Advocates Remuneration Order and plainly contradicts the decree of this court. I see no validity in the arguments in support of the Respondent's objection as the same are incapable of curing this glaring error.

In the premises I allow this application and grant the orders sought as prayed in the Chamber Summons dated 5th April 2004. Costs to the Applicant in any event.

Dated and Delivered at Nairobi this 24th day of September 2004.

M.G. Mugo

Ag. Judge

In the presence of:

S. Musalia Mwenesi & Company Advocate for the Plaintiff -Lavuna

Kiania Njau & Company Advocates for the Defendant - K. Njau