

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL CASE NO. 355 OF 2002

SIFUNA & CO. ADVOCATES PLAINTIFF

- VERSUS -

AKHTAR SHAHID BUTT

MODERN COAST BUILDERS & CONTRACTORS DEFENDANT

RULING

The plaintiff, an Advocate filed suit for recovery of his client/Advocate's costs as against the defendants. He now seeks directions through Chamber Summons brought under Order 49 (d) of the Advocates Act which provides as follows: "49 (d) at any time after the bill of costs has been filed, and before the suit has been set down for hearing, any party to the action may take out Summons for directions as to whether such bill should be taxed by the taxing officer before the suit is heard". Counsel for the Defence Mr. Okong'o opposed the issuance of the said Direction on the ground that there was a dispute as to whether the 2nd Defendant was liable to pay the amounts due and therefore the issue of liability ought to be determined first.

I have read through the pleadings and it is no doubt that the 2nd Defendant is a director in the 1st Defendant Company. As to whether the 2nd Defendant can be held liable for debts owing by the 1st Defendant is an issue that cannot be determined at this stage. However the issue as to whether the Bill of costs should be taxed before the suit is determined is one that must be answered. The suit pending and its origin is the non-payment of the Advocates' costs. Section 48 and 49 of the Advocates Act are clear as to the procedure to be followed. The taxation in my view is to the Advantage of the defendants as they will have no doubt on their minds what kind of amounts are indeed legally due to the plaintiff, if any, at the time they will get down to dealing with the issue of whom among them is liable to pay the same. It has not been shown that the taxation of the Bill of costs at this stage will prejudice the Defence case. It is after all an Independent Cause all together and only the certificate issued by the Taxing officer will be applied in the current suit. In the circumstances, I do grant the direction that the plaintiffs Advocates/Client bill of costs be taxed by the taxing officer before the hearing of the main suit.

Dated and Delivered at Mombasa this 14th day of February, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE