

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. APPLICATION NO. 400 OF 2003

ELDORET MUNICIPAL COUNCIL.....APPLICANT

VERSUS

RURAL HOUSING ESTATE.....RESPONDENT

RULING

The applicant, Eldoret Municipal Council, was dissatisfied with the taxation of the respondent's bill of costs by the Deputy Registrar. The applicant has therefore filed this reference to this court by way of chamber summons as provided by **paragraph 11(2) of the Advocates (Remuneration) Order**. The applicant was aggrieved by the taxation of Items No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 34, 38, 40, 41, 45, 46, 49, 53, 54, 55, 56, 58, 59 and 60 of the respondents' party to party bill of costs dated the 15th of March 2004.

At the hearing of the reference, Mr Shavaji, Learned Counsel for the applicant abandoned the objection Item No. 1. He however submitted that this court ought to retax the respondents bill of costs as suggested by the applicant in paragraph 7 of the affidavit in support of the application. Mr Murimi Learned Counsel for the respondent opposed the reference. He submitted that the bill of costs was properly taxed by the Deputy Registrar of this court in accordance with the provisions of the **Advocates Remuneration Order**.

I have considered the rival arguments made by the parties to this reference. There are several grounds upon which the applicant is challenging the taxation by the Deputy Registrar. One ground is that the application which was ordered consolidated with Nairobi HCCC No. 913 of 1999 had not been heard and determined. The applicant argues that the respondent could tax its bill of costs as if the application has been heard and disposed off. I have carefully read the ruling of Musinga J which was delivered on the 19th of February 2004 and which allowed the respondent to file its bill of costs. The Learned Judge did not dismiss the applicant's application. He however ordered that the same be consolidated with a suit which had been filed in Nairobi.

Upon casual perusal of the file, I have established that the proceeding herein relates to arbitration proceedings and an award which was made by an arbitrator. Musinga J rightly ruled that the matters in dispute ought to be canvassed and adjudicated in one file in Nairobi. In the last paragraph of the said ruling, Musinga J ruled as hereunder:

"The applicant will, however, pay the respondents costs of the application this far before the matter is transferred to Nairobi. The costs should be agreed upon and if not be taxed and for the purposes of assessing or taxing the same the costs payable will be as to a successful applicant in an application" (underlining mine).

My understanding of the Learned Judge's ruling is that the respondent was being awarded costs as if he were a litigant who had been successful in an application in a main suit. The ruling of the said court did not mean that the respondent had been successful in resisting the applicants' application; rather, in the interest of justice, the said court awarded costs to the respondent as it had succeeded in establishing that the applicant had filed the Miscellaneous Application at the High Court sitting at Eldoret instead of filing the same in a suit which was pending between the two parties in Nairobi. The taxation of the respondent's bill of costs therefore ought to have proceeded as if the respondent had been a **successful applicant in an**

application. This is because the application in issue is still pending and is yet to be determined.

Having made the ruling hereinabove, I proceed to tax the respondents bill of costs as hereunder: Item No. 1 is taxed as drawn, Item No. 2 of Kshs 2,500/= is taxed off; to allow the same would amount to double taxation; Item 3 and 4 is taxed off; the same was prematurely filed in view of the fact that the application is still pending. Item No. 5 is taxed at Kshs 1,500/=; Item No. 6 is taxed as drawn. Items No. 7, 8 and 9 were prematurely filed. They will await the conclusion of the application. Item No. 10 is taxed as drawn. Items No. 11, 12, 13 and 14 are taxed off. The same were prematurely filed; it will have to await the outcome of the application filed. Item No. 15 is taxed off; It was prematurely filed. Item No. 18, 19, 20, 21, 22 and 23 are taxed off. The application has not been concluded. The said items can only be presented for taxation upon the determination of the application. Items Nos. 24 and 25 are taxed as drawn. Items No. 26 and 27 are taxed off for the reason that they were prematurely filed. Item No. 29 and 30 are taxed as drawn. Item No. 34 shall be taxed as drawn. Item No. 38, 40, 41 and 45 are taxed off as the same were prematurely filed; The application is still pending hearing and determination. Item No. 46 is taxed as drawn. Items No. 48 and 49 are taxed off; they were prematurely filed as the application is still pending before court. Items No. 53, 54, 55, 56, 58, 59 and 60 are hereby taxed off; The said items were prematurely presented as the application is still pending.

In the premises therefore amount taxed off pursuant to the reference filed by the applicant is Kshs 31,575/=. The same shall be deducted from the sum which was taxed by the Deputy Registrar of this court. The respondent bill of costs is therefore taxed at Kshs 94,590/= less Kshs 31,875 which will be equal to Kshs 62,715/=.

There shall be no orders as to costs.

DATED at NAKURU this 13th day of May 2005.

L. KIMARU

JUDGE