REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

H.C. MISCELLANEOUS CAUSE NO. 1040 OF 1999

AND

IN THE MATTER OF: THE TAXATION OF COSTS

BETWEEN ADVOCATE AND CLIEST

RUSTAM HIRA……APPLICANT/ADVOCATE

AND

HASSANALI VASANJI MANJI……....RESPONDENT/CLIENT

HIGH COURT CIVIL CASE NO. 1466 OF 1998 (O.S.)

DILSHAD HASSANALI MANJI –VS- HASSANALI VASANJI MANJI

R U L I N G

The Chamber Summons dated 29th September, 2000 is taken out under Sections 44 and 51 of the Advocates Act and Rules 11 (1) (2) and 13(1) of the Advocates (Remuneration) Order. It seeks an order:-

> ***"That the order of Taxation of the Senior Principal Deputy Registrar issued on 26 th January, 2000 be Set aside and varied by increasing the quantum Payable to the Advocate."***

Sections 44 and 51 make general provisions for remuneration of Advocates while Rule 11 sets out the procedure for objections to decisions of taxations and Rule 13 relates to taxations between Advocate and client.

An objection was raised that Rule 11 of the Advocates Remuneration Order was not complied with and I, therefore, have to decide on that matter ***in limine*** . Learned Counsel Mr. Chege submitted that this application was filed on 22nd February, 2000 while the Ruling objected to was delivered on 26th January, 2000. That would be a period of 27 days and it would mean that the application is incompetent. In response to that learned counsel for the Applicant Mr. Sheth submitted that there was compliance with Rule 11 by payment of money into Court. It is a submissi0on I do not fathom. Rule 11 (1) states:-

> ***"Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to whic h he objects."***

The record before me shows, and it is common ground, that the decision of the taxing officer was made on 26th January, 2000 and the certificate of Taxation was issued on 8th February, 2000. The record further shows that the Applicant gave notice of objection under Rule 11(1) on 22nd February, 2000. It is obvious beyond peradventure that the notice was not given in accordance with the Rule nor was any extension sought under Rule 11 (4) to file it out of time. In the event the application filed without compliance with that Rule is incompetent and is struck out. That would be sufficient to dispose of the matter.

I have nevertheless considered the application on merits. The major bone of contention is the taxation made on the item of instruction fees where the Applicant sought a fee of K.shs. 2,270,000/= and the taxing officer awarded K.shs. 360,000/=. It was submitted by Mr. Sheth that the fees ought to be based on the value of the subject matter which the Respondent (wife) in her affidavit assessed at K.shs. 150 million. Under Schedule VI 1(a) the basic fee is provided on that figure and therefore, taxing officer was, wrong in applying other schedules. It was a complex matter involving matrimonial property and the taxing officer even so found. The objection should, therefore, be upheld.

For his part Mr. Chege submitted that the schedule referred to was not applicable because it envisages a matter in which the value of the subject matter can be determined from the pleadings, judgment or settlement between the parties. In this matter the figure of Shs. 150 million was only mentioned by the Respondent's wife, not even the client who gave instructions to the Advocates/Applicant and it would be unjust to rely on such figure. The figure at any rate is denied by the husband who only mentioned the items of property in dispute. It is for the Court to eventually decide on such value.

I have considered these submissions and perused the Ruling of the taxing master delivered on 26th January, 2000. I find the ruling well reasoned out and support given by the taxing officer for the decision not to rely on the figure of Shs. 150 million as the subject matter of the suit. I agree with Mr. Chege that the figure of Shs. 150 million was only floated by a self-interested party and was not an agreed one on the pleadings or one determined by the Court. The taxing officer did not violate the exercise of his discretion to warrant the interference with his findings and assessment.

I would, therefore, even on merits, dismiss the objections made.

Application dismissed with costs.

DATED at NAIROBI this 6th day of March, 2002.

P.N. WAKI

JUDGE