



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANEOUS CIVIL APPLICATION NO.199 OF 2016

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA

AND

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE & CLIENT

BETWEEN

MAKUMI, MWANGI, WANG'ONDU & COMPANY.....APPLICANT

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING OF THE COURT

1. This is a reference to the High Court from the decision of the Taxing Officer under the Provisions of Rule 11(2) of the Advocates Remunerations Order. The Applicant had represented the Invesco Assurance Co. limited (client) in **Machakos CMCC. No.1516 of 2010** and in which its Advocate – Client bill has since been taxed but which it now seeks for the same to be reviewed, varied or set aside by way of increasing the instruction fees on item No.1 of Advocate – Client bill of costs that had been awarded by Hon. L. Kaityany (Deputy Registrar) on the 31/10/2016.

2. The Applicant's case is that it is aggrieved by the decisions of the Taxing Officer as regards instruction fees on item No.1 of the Advocate – Client bill of Costs. According to the Applicant the Taxing Officer misdirected herself by misinterpreting the Provisions of Schedule VII of Advocates Remuneration) (Amendments) Order 2009 when she taxed item No.1 as if it was on party and party costs yet this was an Advocate – client Bill of Costs which required that the Instruction fees should be as per Schedule VII B whereby the fee should be increased by one half. The Applicant contends that since the primary suit resulted in a judgment for Shs.125,000/=, then the party and party costs pursuant to Schedule VII A could be Kshs.25,200/= and which should then be increased by one half as provided for under Schedule VII B as this is an Advocate – Client Bill of costs which should have resulted in a sum of Kshs. 37,800/= being instruction fees.

3. The Application is opposed. The Client/Respondent's counsel filed grounds of opposition. It is the Client view that the Taxing Officer complied with the Provisions of the Advocates Remuneration Order and properly applied the principles and exercised her discretion when she taxed the instruction fees for Kshs.25,200/= for which the primary suit resulted in decretal amount of Kshs.125,000/= which does not exceed Kshs.250,000/=. The Client/Respondent therefore sought for the dismissal of the Applicant's Application.

4. I have considered the Applicant's reference as well as the Affidavit in support and grounds of opposition thereto. The item in contention is item No.1 on instruction fees. The learned Taxing Officer gave her reasons for the taxation vide her ruling dated 31/10/2016. She clearly stated that the instruction fees was taxed in line with Schedule VII of the Advocates Remuneration Order 2009 and proceeded to indicate that where the subject does not exceed Kshs.250,000/= then the fees should be Kshs.25,000/= since the decretal sum was Kshs.125,000/=. It is indeed trite law that the High court is not entitled to upset a taxation merely because in its opinion, the amount awarded is high or low and it would not interfere with a Taxing Officers decision unless the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle (see the case of **CONSTRUCTION PETROLEUM ENGINEERING [EA] LIMITED = VS= UGANDA SUGAR FACTORY [1970] EA 141.**

5. Under the Advocates Remuneration Order 2009, instruction fees as regards party and party costs pursuant to Schedule VIIA where the decretal sum ranges from Kshs.100,000/= - 250,000/= is Kshs.25,200/=. However, it is between Advocate and client costs, then the fee shall have to be increased by 50%. Hence the Applicants Bill of Costs on instruction fee should have been Kshs.25,200/= plus an extra 50% thereof (Kshs. 12,600/=) thus coming to Kshs. 37,800/=. It is therefore clear that the Taxing Officer had based the taxation on Schedule VIIA instead of Schedule VIIB which deals with Advocate – Client Bill of Costs. Hence I find the Taxing Officer applied a wrong principle and thereby arrived at a lower award of costs as regards instruction fees as between the Applicant and their client.

6. As the only item contested was the instruction fees and the correct assessment noted above, I find it will save judicial time to assess the instruction fees instead of referring the matter to another Taxing Officer (see **ROSAFRIC LIMITED =VS= THE CENTRAL BANK – MILIMANI COMMERCIAL COURT No.1389 of 2001** (unreported) so as to avoid a situation where parties are saddled with further costs. I proceed to assess the instruction fees at Kshs.37,800/=.

7. In the result, the reference is allowed with costs to the Applicant and the instruction fee is varied from Kshs.25,200/= to Kshs.37,800/= and hence the Advocate – Clients costs awarded to the Applicant is Kshs.76,219/= instead of Kshs.63,619/=.

It is so ordered.

Dated, signed and delivered at Machakos this **10TH** day of **MAY** 2017.

D. K. KEMEI

JUDGE

In the presence of:

C/A: Kituva