



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CIVIL APPLICATION NUMBER 138 OF 2014

NJUGUNA MATIRI & APPLICANT

COMPANY ADVOCATES

VERSUS

NATIONAL BANK OF KENYA LTD RESPONDENT

(Arising From Kericho HCCC No 43 Of 2011 Between Paul Kiprotich Arap Koech Alias Kiprotich Arap Kenduiyo -Versus – National Bank Of Kenya Limited and 2 Others (Later Transferred To Nakuru))

RULING

1. Before the court is an application by way of Chamber Summons dated 24th March 2015 brought under **Paragraph 11(2) of the Advocates Renumeration Order**, by the Respondents, National Bank of Kenya Limited seeking the following orders:

1. That the taxation of the Advocate-client Bill of costs dated 30th June 2014 and taxed on the 3rd March 2015 be reviewed downwards.
2. That the items of the bill objected to be considered afresh in light of the grounds advanced in the objection and on this application
3. Spent
4. Spent

Grounds for the application are stated on the face of the application and in a nutshell, exaggerated, and credit having not been given for legal fees paid to the advocates.

2. One Mary Tallam, the Applicants Branch Manager in her affidavit in support sworn on the 24th March 2015 itemises the objected items and offers explanations to the objections. The proceedings of the primary suit being **Kericho HCCC No. 43 of 2011** are annexed as exhibit. Relied upon too is the Notice of objection the the taxation by the taxing officer dated **16th March 2015**. The Advocates/Respodents though served have filed no responses to the application. The court will therefore proceed to interrogate the objection raised and to re-assess the bill of costs on objected item to determine whether the certificate of costs ought to be reviewed downwards.

3. The Bill of costs was taxed on the 25th March 2015 and a certificate of costs issued in the sum of

Kshs.591,706.70

The items objected to as stated in the objection filed on the 16th March are:

1. Getting up fees (item No 2)
2. Some court attendances in Nakuru High Court taxed as out of station.
3. - Conceded to
4. Items Number 146,147 and 148 as they represent sub-totals and ½ Advocate-client costs and Value Added Tax (VAT).
5. An amount of Kshs.120,060/- as a result of items stated in No 4. above.

On the above items, Mr. Kiburi Advocate submits as follows:

1. The sum of Kshs.69,4000/= was paid to the Advocates so credit ought to have been given by the taxing master and that that failure translated to an increment in the ½ Advocate-client giving rise to Kshs.104,100/.
2. That the taxing officer allowed a sum of Kshs.26,516/70 getting up fees yet the case had never been listed for hearing, hence it ought to be disallowed.
3. It is submitted that 21 attendances charged at Kshs.10,000/=, making a total of Kshs.210,000/= ought to be disallowed.

On the alleged attendances, it is submitted that, five attendances an application were at Kericho High Court and the allowed amount of Kshs. 50,000/= were reasonable. However, six attendances at Nakuru ought to have been allowed at Kshs.5,000/=each and not Kshs.10,000/= as they were not on out of station basis.

It further stated that at the Kericho High Court, five attendances for application where counsel had held brief for the advocates ought to have been to have been charged at Kshs.2,500/= each, at a total of Kshs.12,500/= instead.

He submits that taking into account the above, total attendance fees ought to have been Kshs.83,500/= instead of Kshs.210,000/=. He further submits that other items charged in the sum of Kshs.70,000/= in **Paragraph 11(r)** ought to be disallowed as no such attendances took place.

4. Starting with item No 3, the sum of Kshs.69,400/= is confirmed as having been paid to the advocates it is therefore disallowed.
5. **Getting up fees.** I have perused the proceedings attached to the application in **Kericho HCCC No. 43 of 2011**. I have not seen any where when the suit was fixed for hearing. What was being fixed for hearing were the numerous applications – and mentions for directions – before the High Court and in the Environment and Land Court at Nakuru. At no time was the case certified ready for a full hearing

That being the position, getting up fees ought not have been allowed.

Fees for getting up or preparing for trial is provided for under schedule 6 of the **Advocates Remuneration Order 2014**. It is allowable in addition to the instructions fees, and is not less than a third of the instructions fees allowed on taxation.

Paragraph 2(ii) thereof states that no fee under this paragraph is chargeable until the case has been confirmed for hearing.

As stated above, I have not see any where that at any one time the case was confirmed for hearing. It is clear therefore that no getting up fees ought to have been allowed.

6. I have confirmed that the instructions fees allowed on taxation was Kshs.**78,155/=**. There is no objection on this item. The taxing officer basing the getting up fees on the instructions fees allowed Kshs26,517 as the getting up fees. This has to be discounted as having been irregularly allowed.

7. On the objected attendances, it is my opinion that since the case was filed at Kericho High Court, any attendances by Advocates, by themselves or representatives from Nakuru, ought to be charged under “out of station charges.” the sum of Kshs. 10,000/= per attendance are not objected to. However, when the case was transferred to Nakuru High Court, then, for attendance for hearing of applications/mentions/directions, the applicable scale under the Advocates Remuneration order 2014 is applicable. They were not objected to nor where the attendances said to have been attended at Kericho on “holding brief” basis.

Thus, I see no basis upon which to disallow the sum of Kshs.83,500/= as fees on attendances. I therefore discount a sum of Kshs.126,500/=. On the other items alleged to have been charged as attendances and no such attendances took place, and not supported by the proceedings the court is unable to interrogate them. The amount of Kshs.70,000/= urged to be disallowed will not, be so disallowed. They were no identified.

8. In its totality, the Advocate-Client Bill of Costs dated 30th June 2014 and taxed on the 3rd March 2015 in the sum of Kshs.591,706/70 is reviewed and allowed as follows in summary:

Total Bill of Costs	-	Kshs.1,094,095
Less taxed off	-	<u>798,345</u>
		295,750
Add ½ Advocate-client Costs-	<u>147,872</u>	
Sub total		443,622
Less Paid	-	<u>69,400</u>
		374,222
Add VAT @16%		<u>59,875</u>
		434,097
Add Disbursements	-	<u>1,320</u>
		435,417/=
		=====

A rectified certificate of costs shall issue for the sum of **Kshs.435, 417/=**.

The result is that the application dated 24th March 2015 is allowed with no orders as to costs.

Dated, signed and delivered in open court this 9th day of February 2016.

JANET MULWA

JUDGE