



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

Miscellaneous Case 661 of 2007

MBUGUA & MBUGUA ADVOCATESPLAINTIFF

VERSUS

KENINDIA ASSURANCE CO. LTD. DEFENDANT

RULING

Application dated 10/3/08 filed on 11/3/09 seeking orders to set aside the ruling of Taxing Master taxing client/advocate bill. The application brought under paragraph 11 (2) and 79 of **Advocates (Remuneration) (Amendment) Order 1997**.

The application is based on two grounds:-

1. ***That the decision was against rules of natural justice;***
2. ***That the decision was oppressive.***

The supporting affidavit of Regina Kitheka described as Legal Manager, working with Kenindia Assurance Co. Ltd., the respondent. The reasons for taxation are annexed as "RK1" which states:-

"I considered items on the basis that the amount allowed was reasonable. The rest of the items were taxed to scale under Schedule V."

The client denies instructing advocate to represent Sony Sugar Company Ltd. in **CMCC No. 999 of 1998**. The statement of defence was drawn, signed and filed by V.R.D. Patel Advocates while the plaint was drawn and filed by Nguku & Co. Advocates. The advocate has therefore to prove his retainer.

On the issue of VAT, it was held in **Mereka & Co. vs. National Bank** that it was only instructions fees that would be charged VAT. Therefore, only Kshs.18,000/= should be taxed. Item 1 and 2 are duplication. 2 is taken into account under item 1. The issue of retainer or not seriously taken. The letter dated 23/10/2000 addressed to advocate by V.R.D. Patel states:-

"I act for Kenindia Assurance Co. Ltd. (the client herein) and through them for defendant in the above case (PMCC No. 999 of 1998).

Please take over the conduct of the above case....."

This confirms that an agent of Kenindia did on behalf of Sony Sugar Company appoint the advocate, therefore the issue is dismissed. In fact, the letter of 4/1/2001 does acknowledge:-

"Our advocate M/S Mbugua & Mbugua For the purpose of recording statements."

Perusing the taxation, it does not appear the Taxing Officer breached the rules of natural justice as alleged. The Taxing Officer did deliver a ruling on the issue of retainer. And taxed several items which she thought were not properly drawn. She allowed the bill at Kshs.52,820/50 under Schedule V Part II after taxing 50% client/advocate.

Regarding the matters of taxation of bills of costs the jurisdiction is in the Taxing Officer unless the officer proceeds on wrong principles. The Taxing Officer is the expert in the question of quantum. Thus on the authority of Mereka & Co. Vs. National Bank of Kenya Ltd. – Misc. Application No. 540/2001 Mbaluto, J. said:-

“In any case the law would appear to be against interference in the Taxing Officer’s decision on quantum unless it is shown that the amounts allowed are so excessive as to constitute an error in principle.”

Thomas James Arthur vs. Nyeri Electricity Undertaking [1961] EA 492. There is no evidence that the Taxing Officer acted on wrong principles but as she said, she saw it as reasonable.

I find no merit in this reference and the same is dismissed with costs.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 5th day of November, 2009.

JOYCE N. KHAMINWA

JUDGE