



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

CIV CASE 2363 OF 98

B.H.LALJI PLAINTIFF

VERSUS

B.H. NURANI & OTHERS DEFENDANTS

RULING ON THE PRELIMINARY OBJECTION DATED 10.6.97 This case came to me at the stage when taxation had already been conducted by the taxing master, Mr. Njai, Principal Deputy Registrar, that taxation was objection to.

In the court file was a “Notice of Objection to Taxation”, filed by Messrs Mackecha & Co. Advocates, on behalf of the plaintiff. It reads in full,

“TAKE NOTICE that the plaintiff being dissatisfied with the Ruling of the Principal Deputy Registrar, Mr. Njai, given at Nairobi on 8th November, 1996, objects to the decision of the taxing Master on the following grounds, 1. “Instr uctions fee in all bills ITEM 5”. The bills show that it is actually item 4 and not item 5.

2. “Instructions to oppose application for interim injunction, ITEM No.13”.

The parties to this case appeared before me on 3rd June, 1997, as the court record shows, and after brief submissions I made the following order, “The Ruling read out by the taxing Master dated 8.11.96 does contain his reasons as required by the Advocates Remuneration Order. The taxing Master is therefore not required to give any other reason s in this matter. That being so, the plaintiff is now at liberty to file a substantive application as required by Rule 11(2) of the said order. The application to be filed and served straight away. Mention on 6.6.97 for further orders”.

Both parties participated in formulating the above order because before then, there was an issue as to whether the taxing Master had forwarded the objector his reasons.

The plaintiff’s counsel filed a chamber summons application seeking four orders namely:-

1. “That th e Ruling delivered by Hon. Senior Principal Registrar Mr. Njai on the 8 th November, 1996, be set aside”,

2. “That the court be pleased to re -tax or order for re -taxation item 5 and 13 of the defendants’ bills of costs dated 26 th September, 1996”. www.kenyalawreports.or.ke 3 3. “That the Ho n. court be pleased to grant such orders as it considers just and proper in the circumstances”,

4. “That costs of the application be provided for”, The Chamber Summons application was supported by an affidavit.

The advocate for the 2nd defendant, Mr. Esmail filed a Notice of Preliminary Objection to both the plaintiffs Notice of Objection to Taxation and the Chamber Summons application. Mr. Gautama argued that 4 separate bills of costs were filed by 4 defendants and taxed separately, yet the plaintiff has filed a blanket objection, and not 4 separate objections. That this is literally an appeal against the decision of the Taxing Master, so the grounds of appeal must be clearly set out, as is done in a Memo of Appeal – See Order 41 R 2 of the Civil Procedure Rules. That there should be four separate objections, and four separate and distinct chamber summons applications setting out grounds of objection. On the chamber summons application, Mr. Gautama submitted that the 4 prayers have nothing to do with taxation, and that the reasons for dissatisfaction with taxation must be stated. He urged the court to strike out the chamber summons application, as it is misconceived. As for the notice of objection to taxation, he submitted that the same should also be struck out as it is generalized, and is not clear what Bills are the subject matter of taxation. He submitted further that there is no occasion for an affidavit in a matter like this.

Mr. Wagara for the plaintiff referred to the Ruling of the taxation Master and submitted that during taxation the taxing master did deal with the various bills but he brought out one global Ruling in respect of all 4 Bills of costs. It was on this basis that the application was filed. In the Notice of Objection to taxation the plaintiff is talking of 2 items in all the 4 bills. Mr. Wagara submitted further that the Bills were not taxed independently of each other. That items 4 and 13 were similar in all Bills for taxation, and that is what the complaint is about. Turning to the Chambers Summons filed, Mr. Wagara referred the court to the supporting affidavit saying that it details what is sought from the court. That the grounds appear in the chamber summons. Mr. Wagara submitted further that they have complied with Rule 11 of the Advocates Remuneration Order and the application should be allowed.

I have considered the submissions by both learned counsel, a long side Rule 11 of the Advocates Remuneration Order, which I find does not set out the procedure to be used in filing the Notice of Objection to Taxation and also the Chamber Summons.

I have scrutinized the court file and found that 4 different Bills of costs were filed for taxation. Two items, are however, similar in all those bills of taxation. Items 4 and 13, ie. “Instructions to defend the action” and instructions to oppose “application for interim injunction”. The sum claimed in all the 4 bills of costs filed was the same, and the Taxing Master dealt with this item under one paragraph in his Ruling. Did this cause prejudice to any party? I do not think it did because no party has complained. Part of the submissions by the plaintiff’s counsel was that the application and Notice of Objection to taxation were filed on the basis of the Ruling by the taxing master. I consider that in a situation where no specific procedure is provided for, one can hardly be said to be out of step for adopting the manner and or method used in a Ruling that is being challenged.

Be that as it may, I find that the failure by the plaintiff’s counsel to file distinct separate chamber summons to challenge the taxation showed quite clearly that the 2 items being objected to, though contained in the four bills of taxation filed were taxed as if there was only one Bill of Costs presented. They were lumped together and dealt with in one paragraph of the Ruling, because of their similarity. Though ground 1 of the Notice of Objection talks of Rule 5, I find that this was an error which was subsequently corrected on the submissions of Mr. Wagara to read Rules 4 and 13 and not 5 and 13.

The chamber summons followed quite naturally from the Notice of Objection to taxation. It also attacks item numbers 4 and 13 (though inadvertently written as 5 and 13) and the supporting affidavit gives the reasons.

This was said to be unprocedural in an appeal, but again Rule eleven, already referred to, does not state how the chamber summons is to be drafted otherwise the Rules of procedure do normally require that chamber summons be supported by affidavits. From the points I have considered, I do not find any merit in the preliminary objection and or objections raised to the plaintiff's application and I proceed to dismiss the same with costs. I now invite the advocates to address me straightaway on the substance of the application – i.e., the objection takes on the amounts claimed on items 4 and 13 in all the Bills of Costs. These are the amounts of Kshs. 5 million for instruction to defend the suit, and a sum of Kshs.5,000/= on instructions to oppose the interim injunction application. The record shows that the said injunction application was not heard, and the suit was struck out at a preliminary stage. These are facts all parties are aware of. Once I get the submissions from all learned counsel, then I will be in a

position to write a comprehensive and final Ruling in this matter on the subject of taxation.

This is the order of the court.

Dated at Nairobi this 19th day of February, 1998.

JOYCE ALUOCH

PUISNE JUDGE