



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI**

Civil Appeal 79 of 1997

**BEATRICE WANJIRU KIMANI
APPELLANT**

AND

EVANSON KIMANI NJOROGE RESPONDENT

(An appeal from the Judgment of the High Court of Kenya at Nairobi (Hon. Justice Kuloba) dated 14th November, 1996

in

H.C.C.C No. 1610 of 1995 (O.S)

RULING ON TAXATION

The bill of costs before me for taxation arises out of a majority Judgment given by the Court on November 21, 1997 allowing the appeal and remitting the case back to superior court for re-trial before another Judge.

Mr. Majanja counsel for the respondent has objected on all the items as being high. He submitted that the amount of Ksh.300,000/= claimed on item 1 is too high as there are no particulars of the property shown and that the issue of section 17 of the Married Women Act and impartiality are settled law, therefore no issues of complexity. He argued that getting up fee claimed on item 2 of the bill should be a quarter of the instructions fee as applicable in the High Court. He referred me to rule 9(4) in third schedule to the Rules page 48. He argued that item 3 was a repetition of item 2. In item 4 and 5, he argued that the sum claimed is high and the time the appeal took for hearing is not indicated in item 4. On item 6 Mr. Majanja argued that the bill itself had not complied with rule 3(2) (C) and 3(3) of the third schedule to the Rules. He submitted that the amount of 1,200/= on item 7 and Ksh.600/= on item 15 are on the Higher side. Items 8, 9 and 10, 12 &13 are also excessive and item 11 does not show how many folios. He suggested a figure of Ksh.100,000/= as reasonable instructions fee.

In support of the bill of costs as drawn, Ms. Karua counsel for the appellant the successful party argued that although the value of the properties is not known, the details of the properties which involve several immovable properties are contained in the record.

She said it is a matter the litigants attach great importance. She argued that the law relating to marriage property has not been settled though the court has made several decisions which ought to have settled the

law, but it has not been the case. She said the superior court has shown a measure of reluctance in applying those decisions which had thrown certainty into the law and the case before the court is one of such cases. She argued that the record shows the issues were complex and the size of the record shows the amount of work involved. She said the issue of impersonality raised in the appeal is weighty in nature and complex. She submitted Ksh.300,000/= claimed on item 1 is merited and she suggested that it should have been more had it not been that the case is going for trial. She referred me to a case of Premchand Raichand Ltd & Another -vs- Quarry Serhices of East Africa Ltd. & Another reported in 1972 (E.A) at page 162, and urged me to take judicial notice that the value of money had gone down and the level of Costs should be consistent. She also referred to Civil Appeal No. 71 of 1996 where an award of Ksh.60.000/= was given. The appeal for taxation involved final determination as to whether the claim has totally extinguished or was going to open an avenue as it did in the case. She asked me to look at rule 9(4) in Third Schedule of the rules and depart from my earlier ruling regarding getting up fee and award a quarter of the sum allowed as getting up fee.

She conceded item 3 was a duplication. She also admitted that the bill has several omissions but argued that it is not fatal other than those items where folios ought to have been particularised. She said items 4 and 5 the time spent would be in the court file and would show the appeal was heard for one day which she put as three (3) hours. Ms Karua urged me to use my discretion and award reasonable costs and on all other items she agreed that I may use the scales.

I have read the notes of proceedings before the Court including judgments of the three Hon. Judges of a Appeal, and considered the general conduct of the matter before the Court.

To some degree, the appeal raised some complex issues to be decided by the Court. However, after consideration, the majority judgment was arrived at on the ground that the learned trial Judge appears to have been biased against the rights of the appellant and women in general on the issue of property acquired during the subsistence of marriage. I appreciate the fact that the appellant's counsel had to work tirelessly in finding the Authorities to convince the court to arrive at this decision. The appeal had complex issues but this is one among many other factors to be considered in the appeal.

Having considered the submissions of both counsel in the taxation before me and taking into account what I need to consider in this taxation bearing in mind the Authorities cited, I have come to a conclusion that Ksh.120,000/= would be reasonable fee for instructions in this appeal which I allow. Ksh.180,000/= is taxed off from this item.

As regards getting up fee, no Authority was cited to me to the contrary and no new reasons have been advanced to persuade me to depart from my previous decision regarding getting up fee. I therefore disallow this item in total. Ksh.16,500/= is taxed off from item 4 and Ksh.4,000/= taxed off from item 5.

Since more than one quarter of the profit costs claimed is disallowed, it follows that item 6, 7, 8 and 9 of the bill of costs including the costs for attendance before me are disallowed.

In the result, the bill of costs filed by the Advocates for the appellant on September 28, 1998 is taxed at Ksh.126,050/= which is to be added a sum of Ksh.1261/= making in all shillings one hundred twenty seven thousand three hundred and eleven only (Ksh.127,311/=).

Dated and delivered at Nairobi this 4th day of December 1998.

T. S. LUVUGA

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DEPUTY REGISTRAR

I certify that this is a true copy of the original.

DEPUTY REGISTRAR