



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

Civ Appli 77 OF 1997

REPUBLIC APPELLANT

AND

THE COMMISSIONER FOR CO-OPERATIVE SOCIETIES RESPONDENT

AND

SUKUMA WIKI CO-OPERATIVE SOCIETY LTD

ONESMUS THIONGO KINYATI

CHARLES MAINA MWANGI

DAVID KIRAGU WANJAGI

MAINA GIKUHI

JOHN KIARIE SIMON

ANDREW WATIKI GIKONYO

MUCHOKI MBUTI

CRISPUS MAINA WAIHAKA INTERESTED PARTIES

EX-PARTE

DANIEL MACHARIA

ELISHIBA WANGARI (MRS)

JOSEPH MWANIKI

KAMAU KAGOMBE

FREDRICK KIBOCHI

NJERI NJOROGE

(Appeal from the judgement of the High Court of Kenya at Nairobi (Shah J) dated 5th October, 1994

in

MISC. C.A. NO. 1111 OF 1994)

RULING ON TAXATION

The bill of costs before me for taxation arises out of a judgment of the Court allowing the appeal with costs to the appellants.

Mr. Kamonde, Counsel for the interested parties had objected to items 5, 7 and 8. He submitted that the matter before the court was not complicated as it was a matter of evidence, no law involved. He argued that it was in the High Court where the counsel had to do research and perusal of the Society's Act. Mr. Kamonde submitted that reasonable costs for instructions fee in this appeal would be KShs.35,000/=. He asked me to take note that costs allowed in the High Court were KShs.120,000/=.

Mr. Gichuru adapted the submissions of Mr. Kamonde.

Mr. Kahonge in support of the claims on the affected items submitted that fee of KShs.400,000/= claimed on item 5 is justified. He argued that the interests of Sukuma Wiki Co-operative Society members were at stake and the counsel had to peruse the record and the law relating to election of the officials in the Co-operative Society Act, Society by-laws and legal notices issued by the Commissioner of Co-operatives. He said two authorities were cited. He argued that three prime commercial properties in Nairobi were owned by the subject co-operative society and whoever was successful in the appeal was

to have a substantial stake in the management.

I have read the notes of proceedings before the court including the judgment and taken into account the general conduct of the matter. I have also considered the submissions of all the counsel in this taxation. They all agree that on item 7 KShs.1,000/= be taxed off, item 8 KShs.8,000/= be taxed off from it and item 14 was disallowed by consent. All the other items were agreed upon except item 5 instructions fee.

Normally in the High Court preparation in a case is much more wider with research than in Court of Appeal as in the appeal the points are narrowed down unless in the exceptional circumstances the appeal may turn up to be more complex. There is no such an indication in the appeal before me.

It is also important to note that costs awarded in the High Court were KShs.120,000/=. In my view, the instructions fee of KShs.400,000/= claimed in this appeal is on the higher side. Having taken all factors in this appeal I consider a sum of KShs.70,000/= as reasonable in the circumstances of this appeal which I allow.

According to the receipt in the file, filing fee in this appeal was KShs.440/= and KShs.2,000/= was paid as security.

Security in this appeal will be refundable and therefore it cannot be claimed in the bill of costs as is the case here under disbursements.

A sum of KShs.2,000/= is therefore taxed off from disbursements.

Since more than one quarter of the profit costs claimed is disallowed, it follows that items, 24, 25 and the costs claimed for filing and for attending taxation before me are disallowed.

In the result the bill of costs filed by the appellants on 20th July, 1998 is taxed at KShs.103,410/= which is to be added a sum of KShs.1,035/= making in all KShs.104,445/=.

Dated and delivered at Nairobi this 10th day of December, 1998.

T. S. LUVUGA

DEPUTY REGISTRAR

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR