



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI
Civil Appeal 144 of 1995

DAVID CHEGE MWANGI.....
.....APPELLANT

AND

UNIVERSITY OF NAIROBI.....
RESPONDENT

(Appeal from the ruling of the High court of Kenya at Nairobi (Hon. J.M. Khamoni, Judge) dated 24th April, 1995

IN

H.C.C.C. NO. 792 OF 1994)

RULING ON TAXATION

The bill of costs before me for taxation arises out of the above appeal heard by the Court and judgment delivered on 9th October, 1996 in which the appellant partly succeeded and was awarded one fifth of the costs of the appeal.

Mr. Odera Counsel for the respondent objected to items 5 and 7 of the bill on the grounds that the amounts of Khs.20,000/= and 30,000/= respectively paid to S.K. Ndungi Esq. advocate and indicated on the bill of costs as legal and consultation fees should be disallowed as Mr. Ndungi was not on record and that the scales of costs do not show any item of costs for an Advocate who never appeared. He said the amount claimed to have been paid to Mr. Ndungi was not only exorbitant but the advocate took advantage of the appellant and the respondent should not be held responsible. Mr. Odera said the amount is much higher than what the appellant would have paid an advocate to prepare and argue the appeal for him.

He submitted that the fee paid for legal services should fail and if I am inclined to consider them I

should tax them down to a minimum sum which he suggested to be Kshs.5,000/=.

The appellant in support of his claims said he paid S.K. Ndungi Esq. advocate for preparation of the record.

The appellant showed the two receipts issued by the advocate together with receipts for binding of the records and photocopying.

As I have said in the past in taxation before this court I am required by the Rules of the Court to tax the costs between party and party arising out of an appeal before this court in accordance with rules and scale of costs set out in third schedule to the Rules. See rule 108(1) and 2 page 35 of the Rules.

The appellant in the present appeal was unrepresented at the hearing of the appeal and before me in this taxation.

Rule 19 in third schedule to the rules reads as follow:-

"The taxing officer shall allow the reasonable expenses of a party who appeared in person at the hearing of an application or appeal and those of a witness who gave evidence at any such hearing but shall not allow the expenses of any other person who may have attended the hearing unless the court has so ordered."

As I understood the rule, I should consider what are the reasonable expenses of the appellant in this appeal which I should allow.

As I said before in the appellant's address regarding items 5 and 7 he said the amount was paid for preparation of the records.

On the bill before me item 6 Shs.3,000/= was paid for binding services and on item 15 Shs.6,192/= was paid for photocopying service for six books.

When the appellant was asked to clarify the payments to the advocate and those on the above items he stated that S.K. Ndungi advocate was paid to prepared the memorandum of appeal and to arrange the proceedings and the appellant would in turn bind them himself.

Having considered the submissions of the counsel for the respondent and those of the appellant in this matter, I have not found it easy to understand exactly what services the amounts of Ksh. 20,000/= and 30,000/= paid to the advocate were intended for. The appellant in his explanation said they were paid for the preparation of the memorandum of Appeal and for arranging the proceedings before binding. If that is so then the amounts are exorbitant and it may appear that the advocate took advantage of the appellant as submitted by Mr. Odera. On the bill the appellant has claimed the payments as paid for legal and consultation fee but in his address he first stated they were for preparation of the records and in his explanation he said they were for preparation of the Memorandum of Appeal and for arranging the proceedings.

Having taken into account all that I need to consider in a taxation and taking all the factors in this matter into consideration and with regard to rule 11 third schedule to the rules page 48 and in the exercise of my discretion in this matter, I would disallow items 5 and 7 as regards claim in legal and consultation fee but since the preparation of the Memorandum of Appeal was done by an advocate I would award Kshs.5,000/= as suggested by Mr. Odera and in my opinion being a reasonable figure.

I allow the charges claimed on item 6 as regards binding of the record and on item 15 as regards photocopying service for six books all which I consider reasonable expenses.

All other items on the bill including the sub-heads on each item had been taxed by consent of both the counsel for the respondent and the appellant so I need not deal with each of them.

In the results the bill of costs filed by the appellant in this court on 4th February, 1997 has been taxed and certified at Kshs.22,000/=.

However the court ordered the appellant to have one fifth of the costs of this appeal.

I therefore award the appellant one fifth of the amount allowed of Kshs.22,000/= which is Kshs.4,400/=. The amount should be added a taxing fee of Kshs.44/= making in all Kshs.4,444/=.

Dated and delivered at Nairobi this 18th day of April, 1997.

T.S. LUVUGA

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DEPUTY REGISTRAR