

IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Law JA)

CIVIL APPEAL NO 52 OF 1980

BETWEEN

OUMAAPPELLANT

AND

WAREGA.....RESPONDENT

DECISION

This is a reference from a taxing officer's decision, under Rule 109 of the Rules of this Court by Mr Ouma, the unsuccessful appellant to this Court in Civil Appeal No 52 at Kisumu. Mr Azangalala, who appeared at the hearing for three of the five respondents, filed a bill of costs for over Kshs 9,000 of which Kshs 4,250 was taxed off; the bill as taxed being certified at Kshs 5,026 should be substantially reduced.

He also submits that Mr Azangalala is not entitled to any costs at all. I will deal with this second submission first. It is based on the following premises. Mr Azangalala had appeared in the High Court for three of the successful defendants. This being so, it was proper for Mr Ouma to serve him with the notice of appeal, as he did, under rule 76(2). Mr Azangalala should then have filed a full and sufficient address for service, under rule 78(1). He did not do so, and I have no explanation for this omission. Mr Ouma submits that in these circumstances, it must be assumed that Mr Azangalala was not instructed in the appeal, that his bill of costs is fictitious and should be rejected in total. Mr Ouma relies on *Bhatt v Singh* [1962] EA 103, in which case the successful party's full bill of costs, including instructions fee, was filed by an advocate who had not done the preliminary work, but only came on record at a very late stage when he was instructed merely to tax the costs for work done by other advocates who were then on record. The taxing officer rejected the bill in total and a judge of this Court affirmed that ruling.

The position in this case is different. Mr Azangalala had been instructed in the High Court and he must have satisfied the taxing officer that he continued to be instructed for the purposes of the appeal and that he had done the work specified in his bill. I hold, albeit with some difference, that in the circumstances, the bill was not fictitious and that the failure to file an address for service was not fatal to it. Nor do I think that admittedly wrong dates in the bill are fatal; work in connection with the preparation of an appeal is not done on any particular day, but over a period of days, and the date given for such items as perusing the record, taking instructions, making research into the law and so forth, must necessarily represent an approximation.

As regards the allegedly excessive amount of the bill, this court has wide power to substitute what it considers to be a reasonable amount, but only when it is satisfied that the bill as originally taxed was manifestly excessive or inadequate. I am not so satisfied. This court will be slow to interfere in questions of quantum, in which taxing officers have far greater experience unless a question of principles is involved which has not been shown to me to be the case here.

Mr Ouma has however been able to persuade me that certain items were not claimable at all. For instance, item 3 "Perusing record of appeal" for which Kshs 500 was claimed and Kshs 250 taxed off. That item seems to me to be covered by item 4, "instructions to oppose the appeal, considering the pleadings, proceedings and judgment etc." I accordingly disallow item 3 and strike off the Kshs 250 allowed thereunder. Furthermore, the taxing officer seems to have overlooked paragraph 13 of the Third Schedule

to the Rules. Having disallowed more than ½ of the profit costs, he should also have disallowed the costs of drawing, filing and serving the bill and of attending taxation. This appears to me to cover items 18, 19, 20 and 21 of the bill, totalling Kshs 122. I would accordingly reduce the bill as taxed by Kshs 372, reducing the sum certified from Kshs 5,026 to Kshs 4,634, to which must be added the allocatur of Kshs 50 making Kshs 4,684 in all. I make no order for costs on this reference, as it has met with a small degree of success. I remind the parties of their right to refer this matter to the full court, if dissatisfied with my decision, under rule 109(5).

Dated and delivered at Nairobi this 10th day of March , 1982.

E.J.E LAW

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR