



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO 73 OF 1976

MUJAAD M BUTT.....APPLICANT

VERSUS

ZAVERCHAN M SHAH.....RESPONDENT

JUDGMENT

This is an application under paragraph 11 of the Advocates (Remuneration) Order for the variation of a decision of the taxing officer. The applicant was the successful appellant in an appeal from a decision of the Rent Restriction tribunal. He filed a bill of costs which included an instructions fee of Shs 7500 and a getting-up fee of Shs 2500. On taxation Shs 4300 was taxed off the instruction fee and Shs 1700 off the getting up fee.

Mr DN Khanna for the applicant contended that the taxing officer had failed to perform his judicial duty and had failed to adhere to the uniformity and consistency of awards in that, in a similar but far less complicated case in 1973 (*Thakkar v Jeram* [1973] EA 133), he awarded an instructions fee of Shs 4000. (There was then no provision for a getting-up fee.) The taxing officer (he submitted) had failed to show in his ruling what he had taken into account. He should have considered the general level of fees, the increase in the basic instructions fee from Shs 500 to Shs 750 since *Thakkar v Jeram* and the fall in the value of money.

In allowing an instructions fee of Shs 3200 the taxing officer took into account:

Other fees which have been duly allowed, the nature and importance of the appeal, the interest of parties, the general conduct of the proceedings and all other relevant factors.

which he was required to consider.

By “other fees which have been duly allowed” the taxing officer presumably meant other fees in the same bill of costs, the total of which (excluding disbursements) is Shs 5129. In support of his contention that the taxing officer failed to adhere to uniformity and consistency of awards, Mr Khanna cited only the case to which reference has already been made.

That case was heard by three judges of whom I was one. The main issue was the interpretation of section 4(2)(a) of the Rent Restriction Act. The Court held that, where a landlord has bought (as opposed to constructed) the premises, the only factor to be considered in determining whether the standard rent would yield an uneconomic return was whether or not he received a fair return based on the purchase price paid by him. There were a number of subsidiary issues. Mr Khanna asked for three judges because

the Court would be invited to depart from a decision previously made by two judges and the rent tribunal wrote asking for priority to be given to the case in view of the fact that a substantial point of law was involved and a considerable number of cases awaited hearing on this point.

The taxing officer fully considered these and other relevant matters, including the fact that the basic instructions fee was Shs 750 (not Shs 500 as Mr Khanna has contended in the present application), and taxed off Shs 3250 leaving Shs 4000. This was on 12th June 1973, five years ago; but the basic fee has not altered since then.

In the present case the Court was asked to determine whether two flats let as one tenancy unit but occupied by two separate families represented two dwelling-houses for the purposes of the Act. Mr Khanna argued the case with his usual thoroughness; but it took only one day, no complex point was involved and there is no record that reference was made to any of the authorities (other than the Act itself) listed by Mr Khanna. The appeal was less complicated and of less importance than the *Thakkar* case. A higher fee than that allowed in the 1973 case or even an equivalent fee would not have been justified.

Mr Khanna sought a ruling on the effect of inflation on taxation. This is reflected in the increase in basic fees. I am not disposed to rule that the taxing officer should take any further account of inflation.

With regard to the getting-up fee the taxing officer reduced it to onequarter of the instructions fee. Mr Khanna contended that it is wrong to apply any fraction. With that I would respectfully agree; but I can find no indication that this was the basis of the taxing officer's decision to allow Shs 800. I might have allowed slightly more; but it is not so inadequate as to give rise to an inference of misdirection. I can find no misdirection on a matter of principle. The application is dismissed with costs to the respondent.

Application dismissed with costs.

Dated and delivered at Nairobi this 1st January, 1978.

A.H SIMPSON

.....

JUDGE