



IN THE COURT OF APPEAL FOR EAST AFRICA

AT NAIROBI

(Coram: Law JA (in chambers))

CIVIL APPEAL NO 33 OF 1976

ROGAN-KAMPER..... APPELLANT

VERSUS

LORD GROSVENOR RESPONDENT

JUDGMENT

I have before me a reference by the respondent in an appeal asking me to reduce two items in the appellant's bill of costs on the ground that the sums allowed are manifestly excessive. These items are: (a) the instructions fee claimed by the advocate on record in the sum of Shs 15,000; and (b) a disbursement of Shs 15,000 being the brief fee paid to leading counsel.

The taxing officer reduced these amounts by Shs 3000 and Shs 1000 respectively, allowing Shs 12 000 for the instructions fee and Shs 14,000 for senior counsel's brief fee.

By rule 109(2) of the Rules of this Court:

Any person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a judge and the judge shall have power to make such deduction or addition as will render the bill reasonable. Save as in this sub-rule provided, there shall be no reference on a question of quantum only.

As I understand this rule, a judge will not substitute what he considers to be the proper figure for that allowed by the taxing officer unless, in the judge's view, the sum allowed by the taxing officer is outside reasonable limits so as to be manifestly excessive or inadequate. In this respect I adopt what Buckley L J had to say on the subject in *In the Estate of Ogilvie, Ogilvie v Massey* [1910] P 243, 245:

In questions of quantum the judge is not nearly as competent as the taxing master to say what is the proper amount to be allowed; the Court will not interfere unless the taxing master is shown to have gone wholly wrong.

This *dictum* was cited with approval by the Court of Appeal for Eastern Africa in *D'Souza v Ferrao* [1960] EA 602.

Mr Fraser, for the respondent in the appeal, has referred me to rulings in two comparable cases in support of his submission that the amounts awarded in this case were manifestly excessive. The first of these

cases is *Standard Bank Ltd v Mehotoro Farm Ltd* (unreported), a complicated appeal involving a large sum of money. The appeal succeeded against the first respondent to the extent of over “Shs 200,000. The appellant claimed Shs 10,000 in respect of senior counsel’s brief fee. This was reduced by the taxing officer to Shs 7200. The claim for instructions fee was Shs 8000. This was reduced to Shs 5000. The other case is *Block v Commissioner of Income Tax* (unreported), in which Shs 12,600 was claimed for senior counsel and Shs 9000 for the instructions fee. These amounts were reduced by the taxing officer to Shs 7600 and Shs 5400, respectively. This was also a complicated appeal involving some Shs 280,000. Mr Pabary, for the appellant, has not been able to refer me to cases in which higher fees have been allowed in this Court. He submits that the present reference is against quantum only, and should not be entertained under rule 109. He submits that no error of principle is involved on the part of the taxing officer so as to justify any interference by me; that this was a complicated appeal; and that each case should be considered on its merits, without undue regard to precedent. Mr Pabary also submitted that the effect of inflation should not be overlooked, as a factor justifying higher award today than in the past. I have also considered *Premchand Raichand Ltd v Quarry Services of East Africa Ltd (No 3)* [1972] E A 162, which surprisingly was not cited to me. That was a very complex case, involving over Shs 1,000,000, in which eminent leading counsel from England were briefed. The taxing officer allowed Shs 27,000 for senior counsel’s brief fee, and Shs 20,000 for the instructions fee. These fees were considered by the Court to be manifestly excessive, and were reduced to Shs 15,000 and Shs 10,000, respectively.

I have given careful consideration to the arguments of counsel, and to the precedents to which I have been referred, in particular the *Standard Bank and Block* cases which I consider to be comparable to the one which is subject of this reference. In those cases Shs 7200 and Shs 7600 were allowed for senior counsel, and Shs 5000 and Shs 5400 for instructions fees. In the instant case, Shs 14,000 has been allowed for senior counsel, and Shs 12,000 for the instructions fee. There was an earlier appeal involving the parties to this application, *Grosvenor v Rogan-Kamper* [1974] E A 446, which covered substantially the same ground as the appeal from which this application stems. In that earlier appeal, the successful party claimed an instruction fee of Shs 6000 and was allowed Shs 4000.

It would appear that the fees allowed by the taxing officer in the instant case are almost double the fees allowed in recent years in the comparable cases cited to me. I am driven to the conclusion that the taxing master in this case allowed unreasonably large amounts so that the bill, in all the circumstances, and making allowance for the effects of inflation, is manifestly excessive and should be reduced. I propose to reduce the instructions fee of Shs 12,000 allowed by the taxing officer to Shs 8000, and the brief fee for senior counsel of Shs 14,000 allowed by the taxing officer to Shs 10,000 and I order that the bill be altered accordingly. As regards the costs of this reference, which has in my view succeeded, they have been left to me to assess, and I award the applicant costs in the sum of Shs 290 plus Shs 20 disbursements, making Shs 220 in all. I hope that this matter will be referred to the Court, under rule 109(5), by one or other of the parties or both of them, as it is with diffidence that I feel constrained to differ from an experienced and learned taxing officer.

Order accordingly.

Dated at Nairobi this 13th day of December 1977.

E.J.E. LAW

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JUDGE OF APPEAL