



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

CAUSE NO 842 (N) OF 2010

KENYA UNION OF ENTERTAINMENT AND MUSIC INDUSTRY EMPLOYEES...CLAIMANT

Versus

VANGUARD LIMITED.....RESPONDENT

Mr Mugu for Respondent/Applicant

Muigai for Grievant/ Interested Parties

RULING ON TAXATION

1. This Application challenges the Ruling on the taxation of the Bill of Costs dated 28th October, 2013 on 30th May, 2014 in favour of the Grievants/Respondents in the sum of Kshs 89,285.

2. Items 2,3,6,9,11 and the aggregate amount allowed on taxation is challenged.

Item 2

3. Is challenged on the basis that the taxing master ought to have relied on schedule VI paragraph 1(o), (vi) under the Advocates Remuneration order 2009 and not schedule VI paragraph 1(b).

4. This is because paragraph 1(b) deals with costs for the institution of fresh suit whereas the item related to a Notice of Motion Application dated 30th May, 2013 which Application was disposed of by way of written submissions. The Tax master allowed Kshs 49,000 under paragraph 1(b) when she ought to have allowed Kshs 3,000. The applicant offered to pay Kshs 4,500 however and not Kshs 49,000.

5. The Respondent filed a Replying Affidavit dated 23rd July, 2014 and submits that the matter turns only on the meaning of 'proceedings' Under Rule 1(a) and (b) of Schedule VI (whether commenced by way of plaint, originating summons or as in this case by way of Notice of Motion).

6. Provisions of paragraph 1(o) (vi) apply to applications made during the pendency of the suit (interlocutory applications).

7. This Application was filed after the suit had been heard and determined by a party who was not in the original suit. This matter could have been commenced by way of a plaint by the grievants against the Claimant who had converted their money into its own use and had refused to hand over the money to the grievants.

8. The Respondent submits that the provision of paragraph 1(o) (vi) do not apply in the circumstances.

The Respondent indeed argues that the costs allowed were indeed too little.

9. I find that the Notice of Motion was not necessitated by the conduct of the Applicant but by the Claimant after the matter had been heard and determined. It is therefore not right to visit the huge costs of Kshs 49,000 on the Applicant and the court reduces the costs allowed to Kshs 10,000 in place of 49,000 since it was a notice of motion Application dealt with by way of written submissions and cannot be equated to a fresh suit.

Item 3

10. The Applicant submitted that the Taxing master allowed Kshs 16,000 in respect of getting up fees. Getting up fees is payable when a matter proceeds to full trial which entails preparations of witnesses, written statements, lists of documents and written submissions. See Nakuru HCCC No 1 of 2009 Ramesh N. Patel Vs Attorney General and Another. In this case there was no trial. Two applications were filed and were both disposed of by way of affidavit evidence. Therein therefore no basis for the award of getting up fees.

11. The Court agrees with these submissions and takes off the sum of Kshs 16,000. However, even conduct of a suit by way of Affidavit evidence and written submissions though entails lighter work, entails some preparation and getting up. Accordingly I replace the allowed amount of Kshs 16,000 with Kshs 8,000

Item 6

12. The Application dated 29.5.2013 was never served on the Applicant and was never heard. The court finds that no amount is allowable under this claim.

Items 9 and 11

13. The Court finds no reason to interfere with allowed sum of Kshs 21,000 in respect of court attendance on two occasions.

Item 19 to 23

14. The Court finds no fault on the amount's allowed. Computation of the aggregate amount is revised as follows:

Under Item 2	10,000
Under Item 3	8,000
Under Item 6	735
Under Item 9	2,100
Under Item 10	840
Under item 11	2,100
Under Item 13	840
Under Item 15	2,100
Under Item 19 to 23	<u>5,100</u>
Total	<u>31,815</u>

Dated and Delivered at Nairobi this 3rd Day of July 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE