



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 942 OF 2010
SAMUEL WAWERU MAINA CLAIMANT
VERSUS
THE TRUSTEES OF SISTERS OF MARY IMMACULATE (K)
BEING SUED AS PROPRIETORS OF MARY
IMMACULATE SECONDARY SCHOOL... RESPONDENT

RULING

1. On 8th May 2014, the Respondent herein, the Trustees of Sisters of Mary Immaculate (K), filed their application dated 7th May 2014 as a Chamber Summons under the provisions of paragraph 11(1)(2) of the Advocates (Remuneration) Order, 2009 seeking for orders that the ruling on taxation delivered on 19th March 2014 be varied and or set aside and the Court be pleased to tax the bill of costs dated 3rd September 2013 afresh and or make directions as to fresh taxation to determine the party and party costs payable. This application is supported by the affidavit of Caroline Mwaura. The claimant filed the Replying Affidavit sworn by Elizabeth Karani and filed on 29th May 2014 opposing the application.
2. Both parties filed their written submissions. The respondent's submissions were filed on 3rd July 2014 and the claimant filed their submission on 7th July 2014.
3. The application by the Respondent is based on the grounds that while taxing the bill of costs, the Deputy Registrar invoked the wrong reasoning in the ruling and used schedule VII of the Advocates (Remuneration) Amendment Order 2009 which provides that the High Court, and in this case the Industrial Court shall apply schedule VII in matters before it in which the amount fall within the pecuniary jurisdiction of the subordinate Court. In this case the amount of relief was Kshs.45, 000.00. The bill was taxed under schedule VI while the same should have been taxed under schedule VII unless the Judge directs otherwise and in this case the judge had not given any directions. That the taxing officer held that where the Respondent did not challenge the jurisdiction of the Court then the correct schedule was applied, which ruling was incorrect as it suggested the Court was of the same status as the High Court. That the application of the schedule by the taxing officer made costs more expensive than at the High Court and thus the application objecting to the bill of costs as taxed.
4. Further grounds in the affidavit are that the award to the claimant was Kshs.13, 841.00 and the bill of costs was at Kshs.110, 246.00 making it 7 times more which is unjust. The award falls within the jurisdiction of the subordinate Court even though the case was heard before the Court and paragraph 58 of the Advocates remuneration amendment order, 2009 make it mandatory for costs in such case to be taxed under schedule VII unless the Court directs otherwise.

5. In reply, the claimant stated that the award of the Court was with costs, which costs the claimant assessed to Kshs.110, 264.00 and the taxing officer gave reasons as to how the taxed amount was arrived at by application of schedule VI of the advocate's remuneration order, 2009. The case was filed before the Industrial Court as the Court with jurisdiction to hear the matter and taxation done is fair as this was awarded by this Court.

Submissions

6. In submissions, the respondent noted that the award herein was Kshs.13, 841.00 and costs are assessed at kshs.110, 246.00 as an exaggerated amount which is unreasonable as the award of the court falls within the pecuniary jurisdiction of the subordinate court and in this case rule 58 of the Advocates (Remuneration) order should apply. The respondent relied on **First American bank versus Shar and Others [2002] 1 EA 64**, where the court held that the court will not interfere with the decision of a taxing officer unless it is shown that either the decision was based on an error of principle or the fee awarded was so manifestly excessive.

7. The Claimant on their part submitted that the court has jurisdiction over the matter and the applicable schedule in taxing the bill of costs is schedule VI of the Advocates (Remuneration) Order, 2009 as the claim was heard before the Industrial Court and the award herein relate to the Court decision. The taxing officer therefore did not commit any error in using the appropriate schedule. The Claimant relied on **Paul Sikali versus Mowlen Construction Co. Ltd and P.R. Maclean, HCC No. 144 of 1962** where the court held that Rule 58 of Schedule VII only apply only when the amount or relief awarded to a party by the High Court as a trial court is within the competent of a subordinate court and does not apply where the matter is within the jurisdiction of the High Court.

8. Article 162(2) of the Constitution is the architecture of the Labour Relations Court (Industrial Court) of Kenya. It gives the Court original jurisdiction over employment and labour matters. This is further expounded by the Industrial Court Act at section 12 setting out matters that can be filed before this Court. The Court being a superior Court for all intents and purposes, the proceedings, orders and any decrees of the Court follow cause that they are handled in similar manner like any other superior Court.

9. Therefore once the Court has made its finding and made an award or ruling, the Court may, subject to the rules, make such orders as to costs as the Court considers just. Section 12(4);

(4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.

10. Therefore where costs are awarded, the Rules of the Court apply. Rule 29(1);

29. Costs and Interest.

(1) The Court may grant costs provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court shall for good reasons otherwise order.

11. The costs herein awarded followed the cause and this award did not oust the jurisdiction of the Court. This remains a superior Court and not a subordinate Court for any purpose. The schedule applied by the taxing officer as the officer of this Court did that assessment under the correct schedule applicable for the Court. To apply any other schedule applicable to the subordinate Court or any other Court that is not part of the Courts as outlined under Article 165 of the Constitution would be to demean the orders made by the Court with regard to costs.

Schedule VI of the Advocates (Remuneration) Amendment Orders, 2009 is the correct schedule applicable in this case. Where the taxing officer has not applied this schedule, the same to be reviewed and applied as appropriate within the next seven (7) days and the Court to mention the matter in fourteen (14) days to confirm compliance for the Court to make final orders with regard

to the costs payable to the party awarded such costs.

Application herein dated 7th may 2014 dismissed with costs.

Delivered in open court at Nairobi this 24th Day of September 2014

M. Mbaru

Judge

In the presence of:

.....

.....