



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CIVIL APPLICATION NO. NAI. 79 OF 1999 (UR.30/99)
BETWEEN**

**NYAKIBA WILLIAM MORURIAPPLICANT
AND
JANE KEMUNTO NYAKIBARESPONDENT**

**(Application for stay of execution in an intended appeal
from the Judgment and Decree of the High Court of
Kenya at Nairobi (Justice Etyang) dated 6th February, 1998**

in

JUDICIAL SEPARATION CAUSE NO. 15 OF 1995)

RULING ON TAXATION

The applicant's counsel in this application before me for taxation has not appeared though served on 4th June, 2002 with the taxation notice.

Hon. Karua counsel for the respondent has submitted that the application was for stay and was under Certificate of Urgency.

The whole record and documents accompanying the application were over 60 pages, High Court Judgment is 54 pages and the application including the Certificate of Urgency over 15 pages. The Judgment which the applicant intended to stay was in a Matrimonial matter where the High Court had granted an order for Judicial Separation. The maintenance granted to the respondent was Kshs.15,000/= plus school fees for children all totalling to Kshs.25,000/= per term. She argued that the arguments in the application entailed making arguments for the entire appeal and up to date no appeal has been filed.

The ruling of the Court in the application is four pages long. She referred to a ruling on taxation in **Civil Application No. Nai. 293 of 1998**, in which she said Kshs.97,000/= was awarded and urged me to award the Instructions fee as claimed in the bill of costs.

Other items in the bill of costs were taxed item by item.

In this taxation I have considered the submissions of the counsel for the respondent, the general conduct of the matter before the Court and have also read the ruling of the Court in the matter.

As the counsel corrected submitted the application was for stay of the High Court Judgment in a matrimonial matter.

The parties involved in the litigation are husband and wife.

As can be established from the ruling, the Court did not find difficulty to dispose of the matter on the ground that there was no sufficient material to enable the Court to determine whether or not the applicant had an arguable appeal.

The Court did not find it necessary to deal with the issue as to whether or not the intended appeal will be rendered nugatory as that would have only arisen if there was an arguable appeal.

At the time the Court was dealing with this application the principles upon which the Court grants a stay under rule 5(2) of the rules of this Court had been already well settled.

In my view, therefore, taking into account the matter before the Court in accordance with rule 9(1) of the third Schedule to the rules, the application was simple and straight forward.

The ruling on taxation in **Civil Application No. Nai. 293 of 1998 Meeme J. M. Anjuri vs. Philomena Wanjiru Anjuri** referred to me by the counsel a total of Kshs.78,624/= was awarded out of which Kshs.60,000/= was Instructions fee and I had this to say on page 3 of the ruling and I quote. **"The Counsel for the applicant made a generous offer of Kshs.60,000/=. In exercise of my discretion, I award Kshs.60,000/= which the applicant's counsel was ready to give and in my view a generous figure and far much reasonable in the circumstances of the application"**. Obviously, this amount was awarded due to the offer made by the counsel which is not the case in this taxation before me.

The amount of Kshs.150,000/= charged on item 1 of the bill of costs in my view, is far much excessive and cannot be allowed to stand. I consider a sum of Kshs.20,000/= to be reasonable in the circumstances of this application which I allow. Kshs.130,000/= is therefore taxed off from this item.

Since more than one quarter of the profit costs claimed is disallowed, it follows that items 7, 8, 9 and the costs of attending the taxation before me are also disallowed.

In the result, the bill of costs filed by the respondent's counsel on 18th December, 2000 is taxed at Kshs.24,500/= which is to be added a sum of Kshs.1,225/= making in all Kshs.25,725/=.

Dated and delivered at Nairobi this 12th day of July, 2002.

T. S. LUVUGA

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