



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, O'KUBASU, JJ.A. & ONYANGO-OTIENO, AG.J.A.)

CIVIL APPEAL NO. 70 AND 71 OF 1995

BETWEEN

CHINA JIANGSU INTERNATIONAL TECHNICAL

ECONOMIC CO-OPERATION CORPORATIONAPPELLANT

AND

EDWARD KINGS ONYANCHA MAINA

T/A MATRA INTERNATIONAL ASSOCIATES RESPONDENT

(Application to dismiss an appeal from the Ruling of the High Court

of Kenya at Nakuru (Hon. Justice Nambuye) dated 18th day of

October, 1993

in

H.C.C.C. NO. 125 OF 1993)

RULING OF THE COURT

This is a reference from the ruling of a single judge of the Court delivered on *5th May, 2003* in which he dismissed a reference from the taxing master- the Deputy Registrar.

The applicant, who has always acted in person, told us that he filed two bills for taxation but, in his view, denied costs as he was awarded only *Shs. 16,527/=* . In his view, taxation by the single Judge of this Court was punitive. The applicant therefore asks us to interfere so that his bill of costs should be taxed on each individual file.

This matter can be traced back to the ruling of the Deputy Registrar of this Court delivered on *13th September 2002* . In that ruling the Deputy Registrar stated inter alia:-

“The respondent being a person who appeared in person is not entitled to costs as an Advocate. The costs are not meant to be a punishment to the unsuccessful party but rather to compensate the successful litigant the reasonable costs he has to incur. The respondent seems to have been motivated by success and intends to gain from the appellant. In some of the claims the respondent made visits to Nairobi whenever he felt he should check on something even when not invited by the Court. These are quite unreasonable claims.

In my view, therefore, the respondent is entitled to reasonable costs incurred. There is no dispute that the respondent lives at Nakuru.

The respondent will therefore be entitled to reasonable costs on the dates when he was summoned or invited to come to Nairobi but not at any time he felt he should come.

I also take note that the court did not make a separate order in each file but only one order which struck out the appeals. I will therefore deal with the taxation in the same way”.

Having dealt with other issues raised by the applicant the Deputy Registrar concluded his ruling thus:-

“In all and after taking into account relevant factors, I consider a total of *K.Shs.12,000/=* to be reasonable and to cover the respondents cost in the circumstances of the two amended bills filed in Court on *28th March, 2002* by the respondent in Civil Appeals No. 70 and 71 of 1995 which will include a total of *K.Shs. 15,740/=* . In the result the two bill of costs are taxed at a total of *Kshs. 15,740/=* which is to be added a sum of *K.Shs.78 7/=* being a *5/=* out of every *100/=* allowed making in all a total of *Shs.16,527/=*”.

The learned single Judge considered the submissions made to him together with the sentiments expressed by the Deputy Registrar in his ruling and came to the conclusion that there was no merit in the reference before him. In his ruling the learned single judge observed:-

“The applicant has erroneously lodged his bill of costs as if he were an advocate. This fact was fully considered and rejected by the Deputy Registrar. Moreover I do not find any reason to enhance costs as relating to transport and out of pocket expenses. The taxation in my view is reasonable and not capricious”.

We have now heard the applicant on this reference and from his submission to us he appears to be suffering from a mistaken belief that he is entitled to costs as if he were an advocate. He was reminded of this mistaken belief by both the Deputy Registrar and the learned single Judge. On our part, we cannot say that the learned Judge in his ruling was plainly wrong or that he had taken into account a factor he ought not to have taken into account or failed to take into account a factor he ought to have taken into account which might have led him into reaching a plainly wrong decision. For the foregoing reasons, we see no reason or justification for us to interfere with the discretion of the learned single Judge. Consequently, this reference is dismissed with costs.

Dated and delivered at Nairobi this 21st day of November, 2003.

R.S.C. OMOLO

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JUDGE OF APPEAL

E.O. O’KUBASU

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JUDGE OF APPEAL

J.W. ONYANGO-OTIENO

.....

AG. JUDGE OF APPEAL

I certify that this is a
true copy of the original.

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