**asea brown boveri ltd v bawazir glass works ltd and another**

**Division:** Milimani Commercial Courts of Kenya at Nairobi

**Date of ruling:** 7 April 2005

**Case Number:** 1619/00

**Before:** Emukule J

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Advocate – Remuneration – Attendance fees in the High Court – Higher and lower scale – Principle regarding the scale upon which costs shall be taxed.*

*[2] Advocate – Remuneration – Instructions and getting-up fees – Whether they could be chargeable more than once – Whether the time lapse between one hearing and another may justify an increase in instruction fee – Schedule VI – Advocate’s Remuneration Order.*

*[3] Advocate – Remuneration – Taxation reference – Principles governing taxation of costs and reference to the High Court from the taxing officer’s decision.*

*[4] Words and Phrases – “Hearing” – “Trial” – Though there may be several days of hearing there is but one trial commencing from the first date of hearing.*

**EDITOR’S SUMMARY**

The applicant lodged a taxation reference objecting to the reduction of its bill of costs. The applicant

contended that it was entitled to charge twice for getting-up fees because the hearing was adjourned and did not proceed on the first day it came up for hearing, and there was a long time interval between the first and next hearing date, thus necessitating fresh preparation for trial. Further, the applicant argued that attendance fees should have been allowed on the higher scale as the matter had been defended.

The respondent objected to an increase in the bill. It contended that instructions and getting-up fees are awardable only once in the trial, and that a further increase of instructions fees on account of subsequent hearings may be allowed but only upon an order of the trial Judge following an application to that effect. It was also contended that attendance fees were to be granted on the lower scale unless there was a special order of the trial Court.

**Held** – A taxation reference would be entertained either on a point of law or on the ground that the bill as taxed was manifestly excessive or inadequate. The instructions fee should cover the advocate’s work, the taxing master should tax each bill on its merits, the taxing officer should exercise his discretion judiciously and in accordance with the applicable Schedule, and the taxing officer should also consider the public policy. *Kassim v Habre International Ltd* [2001] 1 EA 98 adopted. Instructions fees are static that is chargeable only once. In view of this, it is difficult to accept the argument that the getting-up fee, which is based on the instruction fee, is somewhat elastic and is chargeable on every day to which the case is adjourned, more so if there is a long period between two hearing dates. There is neither such rule in law or principle. *First American Bank of Kenya Ltd v Shah* [2002] 1 EA 64 considered.

High Court attendance fees, unlike those in the lower Court, are only chargeable on the higher scale where a judge has certified that the matter be taxed on the said scale because of the nature, importance, difficulty or urgency of the case or issues involved in the case. Where no such order is made under paragraph 50A of the Advocate’s Remuneration Order, the costs shall be taxed in accordance with the lower scale. *Per curiam –* Unless there is an order for a retrial of a matter, there is but one trial of a suit and many hearing days to which such trial may be adjourned. To say otherwise is complete heresy of the rules of procedure.

Application fails and is dismissed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*First American Bank of Kenya Ltd v Shah and others* [2002] 1 EA 64 – **C**

*Kassim v International Ltd* [2001] 1 EA 98 – **A**

*Raichand Limited v Quarry Services EA Limited* [1972] EA 162

*SRD Souza and others v CC Ferr and others* [1960] EA 602

*Steel Construction Petroleum Engineering (EA) Ltd v Uganda Sugar Factory* [1970] EA 141

*Thomas James Arthur v Nyeri Electricity Undertaking* [1961] EA 492