

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

FAMILY DIVISION

SUIT F.D/S 131/97

BETWEEN BERT SEYMOUR SAMUELS PETITIONER

A N D PAULINE AMANDA SAMUELS RESPONDENT

Mr. L.O'B. Williams for the Petitioner instructed by Miss Stacy Allen of Patrick Bailey and Company, attorneys-at-law.

Miss Dundeen Ferguson and Miss Maliaca Wong for the respondent instructed by Rattray, Patterson and Rattray, attorneys-at-law.

**HEARD: DECEMBER 14TH, 15TH, 1999 AND
OCTOBER 5, 2000**

RECKORD, J.

This is a summons filed on behalf of the petitioner asking that the certificate or Allocatur of the Deputy Registrar of the Supreme Court in respect of the respondent's Bill of costs filed herein be set aside on the grounds that the costs were improperly disallowed or reduced. In effect it is an application for review of the respondent's bill of costs.

In particular the items objected to relates to the respondent's claim for the following:-

Brief Free -- Counsel Pamela Benka Coker Q.C.	\$60,000.00
Instructing attorney-at-law	40,000.00
Audre Earle	4,500.00
Attendance at Court on	
June 9, 1998	
2 letters to facility of Law Library,	

Cave Hill, Barbados

160.00

The respondent contends that the brief fees, the two first items mentioned above, were reasonable and not excessive in that (1) certificate for counsel was granted (ii) the matter involved complex issues requiring authorities obtained from out of this jurisdiction. (iii) there were cross-examination of witnesses (iv) Mrs. Banka-Coker is a Senior Queen's Counsel.

On the other hand, the petitioner contends that the brief fees claimed were too excessive; that the fee claimed for attendance of instructing attorney was excessive. Attendance was as attorney not as counsel; that the costs for letters to Barbados ought to be included in counsel's brief fee and not as a separate fee.

Further Mr. Williams contends that this was a summons for custody and maintenance of child heard in chambers, not in open court.

The fee of \$35,000.00 was more than reasonable in an interlocutory matter held in chambers.

With reference to the fee claimed for a junior, Mr. Williams pointed out that in 1997 there was recommendation by the Honourable Chief Justice that a reasonable fee would be \$4,500.00, but that this was as counsel, not as instructing attorney-at-la. Therefore the \$2000.00 awarded by the taxing master was reasonable.

Mr. Williams submitted that at the rate of \$400.00 per hour the award of \$1,200.00 for 3 hours was reasonable for attendance at chambers on June 9, 1998, when costs were awarded on an adjournment.

FINDINGS

When the Deputy Registrar taxed the respondent's bill of costs there was no schedule of fees with respect to the items which are in contention. It is therefore left to

the discretion of the taxing master, who employing her knowledge and experience, determines what she considers the right figure.

"The judge in his turn, must, I think, consider whether, on his own knowledge and experience the figure adopted by the taxing master falls above the upper or below the lower limit of the range within which in his view the proper figure would come. If, and only if, it does fall above or below those limits, he should substitute his own figure." **per Pennycuick, J. in Simpsons Motor Sales (London) Ltd. vs. Hendon Corporation (1964) 3AER at 838.**

On the face of it this matter from which this dispute arose, was in respect of what appears to be a simple application for custody and maintenance. Miss Ferguson, however, in her affidavit, of the 18th June, 1999 stated:-

"The matter involved complex issues requiring authorities which were cited and which said authorities were obtained from out of the jurisdiction."

From the affidavit evidence before me and on hearing legal submissions from both parties, I am not persuaded that the taxing master exercised her discretion on wrong principles, or on no principles at all, or that the figures she substituted were so out of line, that it would lead to injustice to allow them.

In relation to the claim to recover the costs for letters to the faculty of Law Library in Barbados, I agree with submissions by counsel for the petitioner that such costs ought to have been included in the Brief Fees. In any event, the principle 'De Minimis Non Curat lex' applies.

Accordingly, the respondent's application for a review taxation is dismissed.

Costs to the petitioner in accordance with schedule A.