



Karen & Associate Advocates v Njoroge (Miscellaneous Application E010 of 2021) [2024] KEHC 16673 (KLR) (29 July 2024) (Ruling)

Neutral citation: [2024] KEHC 16673 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS APPLICATION E010 OF 2021**

JL TAMAR, J

JULY 29, 2024

(ARISING FROM KAJIADO SUCCESSION CAUSE NO 19 OF 2017)

BETWEEN

KAREN & ASSOCIATE ADVOCATES APPLICANT

AND

CAROLINE WANGARE NJOROGE RESPONDENT

RULING

Background:

1. The applicant successfully filed a succession cause no 19 of 2017 and obtained certificate of confirmation of grant on 20th day of November 2017 where upon the properties were distributed and shared between two beneficiaries, Caroline Wangari Njoroge and Monica Wambui Njoroge. Subsequently, parties fell out leading to the advocate filing a bill of cost in Miscellaneous application number 26B of 2018. The bill was determined and taxed at 1,272,685 and upon reference, the same was reviewed upward by the high court at ksh.1,927,027.
2. Consequently, the applicant/Advocate filed 18 separate bills of cost in relation to each of the properties forming part of the estate of the deceased, John Njoroge Mutang'a and which were transmitted by the advocate to the beneficiaries. The respondent raised a preliminary objection the subject of the taxing masters ruling dated 30th November 2020 where the court held;
 - a. That the bills should be lodged under schedule 10 of the 2014 Advocate Remuneration Order and not schedule 1
 - b. That since the instruction for transmission relate to one and the same estate, the applicant is ordered to consolidate the more than 17 bills into one bill which will then be the subject of taxation.



3. Dissatisfied, the applicant filed a chamber summons application dated 20th May 2022, in the main challenging the taxing master's aforesaid ruling. In the applicant supporting affidavit sworn on 20th May 2022, the taxing officer is faulted for finding that the applicable schedule relating to probate and administration was schedule 10 of the advocate remuneration order and not schedule 1 as urged by the applicant. The applicant argued that the applicable schedule for transmission of several properties to the beneficiaries scattered across the country ought to have been considered under schedule 1 of the advocate remuneration order which deals with sales and purchases of land registered in any registry. And that rule 26 (2) of the advocate remuneration order defines 'conveyance' 'mortgage' and 'mortgagee' to include 'transfer' or 'assignment'.
4. The applicant also faults the decision of the taxing master ordering consolidation of the bill of costs for the reason that it would be difficult to challenge specific items in the bill in the events of an objection to some and not all of the items. Further the consolidation of the bills as ordered by the taxing master may result in a miscarriage of justice considering that the properties are different, with different values and expenses depending on where the property is located.
5. The respondent filed submission urging the court to affirm the decision of the taxing officer that, the applicable schedule on matters probate and administration is schedule 10 of the advocate remuneration order. Secondly that the taxing master was correct in consolidating the more than 17 bills into one bill to be taxed as such. He argues that the work done by the advocate was to transmit the various properties registered in the deceased name in favour of the beneficiaries and that there was no consideration mentioned in the transmission. Further, the *Stamp Duty Act* Cap 480 laws of Kenya provide for instances where one can be exempted from duty payable which instances include, transfer by way of transmission e.g. pursuant to a will or intestacy
6. On consolidation of the bills, counsel submitted that the same was done by consent of the parties and that the applicant should not be allowed to challenge it.
7. The issues for determination as correctly identified by the parties are two;
 - i. The applicable schedule under the advocate remuneration Order 2014 relating to Transmission of a deceased estate to the beneficiaries.
 - ii. Whether the Taxing Master erred in consolidating the bills filed by the applicant.
8. It is important to note that the bill on instruction to transmit the properties comprised the estate of the deceased to the beneficiaries and initiated by the applicant before the Taxing Master is yet to be taxed. The applicant argues that the bills presented for taxation ought to be considered under schedule 1 of the advocate remuneration order.

Paragraph 18 part 2 on non-contentious matters provides;

 - a. In respect of sales, and purchases of immovable properties or an interest in immovable property, and in respect of debentures, mortgages and charges... the remuneration is to be that prescribed by in schedule 1.
9. It is clear from the above paragraph that schedule 1 is applicable in non-contentious matters involving sale, purchases and securities of immovable properties or interest thereto. The bills the applicant intends to tax relate to transmission of several properties that form part of the estate of the deceased to the two beneficiaries earlier pointed out. And although transmission connotes transfer in the plain



use of the word, as argued by counsel for the applicant, it does not necessarily mean the same thing. Law Dictionary defines transmission to mean;

The right to which heirs or legatees may have of passing to their successors the inheritance or legacy to which they were entitled, if they happen to die without having exercised their right.

10. On the other hand, transfer is defined as;

An act of the parties, or of law, by which the title to property is conveyed from one living person to another.

11. Schedule 1 of the advocate remuneration order would therefore not apply where the instructions to an advocate do not relate to sale or purchase of immovable property with or without a consideration.

12. The respondent through counsel, supports the decision of the Taxing master on the application of schedule 10 of the advocate remuneration order 2014 and submitted that the work done to transmit the properties were works under “probate and Administration”.

13. Schedule 10 of the Advocate remuneration order applies to proceedings relating to application for grant of probate of written will or letters of administration. The role of a probate court ends upon issuance of a confirmed grant and any other subsequent steps taken are not the function the probate court. The Taxing master was therefore right to find that the issue of transmission of the estate to the beneficiaries is separate from filing of succession cause. That being the case, would schedule 10 of the advocate remuneration order then apply when the succession cause had ended by issuance of confirmed Grant?

14. In re Estate of Daniel Khasievera (2022) Eklr Justice Musyoka stated as follows;

“ what follows confirmation of grant is transmission of the assets to the named beneficiaries as per the certificate of grant. Transmission of property as per certificate of grant is a concept in land or property law not regulated by the succession law, hence the silence in the succession Act and probate and administration rules.” The court held that; “transmission of property after confirmation of grant is provided for under the Land Registration Act no 3 of 2012 and the Land Act, no 6 of 2012 which provides in part 6 for transmission and trust”.

15. It is therefore correct to hold that transmission of property of the deceased person upon issuance of confirmed grant is governed by a different legal regime i.e. Land Act and Land registration Act 2012. And that the remuneration of an advocate for transmission of property (s) to the beneficiary is not provided for either under Schedule 10 or Schedule 1 of the Advocate remuneration Order.

16. In my view, a bill of cost in respect of transmission of the properties of the deceased to the beneficiaries after confirmation of grant falls under schedule 5 of the Advocate remuneration Order which is titled “fees in respect of business the remuneration for which is not otherwise prescribed or which has been the subject of an election under paragraph 22”

17. Consequently, I order that the pending bill of cost before the taxing master do proceed expeditiously under the schedule 5 of the Advocate Remuneration Order and as consolidated by the consent of the parties.

DATED AND DELIVERED THIS 29TH DAY OF JULY 2024

JOHN T. LOLWATAN

JUDGE

