



REPUBLIC OF KENYA



**Njoroge v Musyoka Murambi and Associates Advocates (Miscellaneous Civil Application E910 of 2021) [2022] KEHC 2999 (KLR) (Commercial and Tax) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 2999 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E910 OF 2021**

**DAS MAJANJA, J**

**JUNE 30, 2022**

**BETWEEN**

**ANN WAMANI NJJOROGE ..... APPLICANT**

**AND**

**MUSYOKA MURAMBI AND ASSOCIATES ADVOCATES ..... RESPONDENT**

**RULING**

1. On 13<sup>th</sup> October 2021, the Deputy Registrar delivered a ruling in respect of the Advocate-Client Bill of Costs dated 26<sup>th</sup> May 2021 filed in Comm Misc. Appl. No. E401 of 2021, Musyoka Murambi & Associates Advocates v Ann Wamani Njoroge. The Advocate represented the client who was the 1<sup>st</sup> Defendant in Nairobi Comm No. 246 of 2014. The Bill of Costs emanated from that suit which was settled by consent between the parties on 30<sup>th</sup> November 2016 on terms that judgment was entered in favour of the Plaintiff therein for KES. 5,570,000.00.
2. In the Bill of Costs, the Advocates sought KES. 1,270,000.00 as, “Instruction fees to defend the Respondent in Comm No, 246 of 2014 where the value of the subject matter was KES. 50,000,000.00.” Taking the value of the subject matter to be the settlement amount of KES. 5,570,000.00, the Deputy Registrar applied the provisions of Paragraph 1 (b) of the Advocates Remuneration Order (“the Order”) and assessed the amount of instruction fee at KES. 215,000.00 therefore taxing off KES. 1,055,000.00 from the instruction fee. The Deputy Registrar justified the award of Getting Up fees on the ground that the matter had been prepared for hearing.
3. Being dissatisfied with the decision of the Deputy Registrar, the Client filed the Chamber Summons dated 15<sup>th</sup> December 2021 under Para. 11 of the [Advocates Remuneration Order](#) (“the Order”) in this matter seeking to set aside the decision on Instruction and Getting Up fees. The application is



supported by the deposition of her advocate on record, Lawrence Muriithi Mbabu, sworn on 15<sup>th</sup> December 2021.

4. The grounds advanced by the Client are that the Deputy Registrar failed to take into account the scale fees prescribed in Schedule 6 of the Order. That the Deputy Registrar failed to consider that the Instruction fee ought to have been based on the value of the judgment and not the value of the subject matter. That she failed to take into account the fact that the suit was settled before it proceeded for hearing and the advocates were not entitled to full costs. This means that the Advocates ought to have been awarded 75% of the amount arrived at using the scale in Paragraph (b) of Clause 1. The Client also complains that since the matter did not proceed for hearing, the Advocates ought not have been awarded Getting Up fees.
5. The Advocates support the decision of the Deputy Registrar and urge that the value of the subject matter being property LR No. 139/23 indicated to be worth KES. 50,000,000.00 as per the sale agreement dated 20<sup>th</sup> December 2012 and for which the Plaintiff in Nairobi Comm No. 246 of 2014 had paid KES. 5,000,000.00 whereupon the client refused to transfer the property. The parties in the suit entered into negotiations resulting in a consent dated 19<sup>th</sup> October 2016 in which the Party and Party Costs were settled at KES. 750,000.00 and the Client ordered to refund the deposit of the purchase price being KES. 5,000,000.00. The Advocates argue that the court should not disturb the value of the subject matter which was KES. 50,000,000.00 but more importantly Party and Party Costs which were agreed at KES. 750,000.00.
6. Whether the court should intervene in this matter is governed by the general principle that this Court will only interfere with the decision of a taxing officer in cases where there has been shown to be an error of principle (see *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR and *Arthur v Nyeri Electricity Undertaking* [1961] EA 497).
7. Instruction fees is calculated from the value of the subject matter. The Deputy Registrar rightly cited the case of *Peter Muthoka and Joseph Mumo Kivia v Ochieng, Onyango, Kibet and Ohaga Advocates* NRB CA Civil Appeal 328 of 2017 [2019] eKLR where the Court of Appeal stated as follows;

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis of determining subject value. Once judgment has been entered, and for what seems to us to be obvious reason, recourse will not be had to pleadings since judgment does determine conclusively the value of the subject matter as claim no matter how pleaded, gets its true value as adjudged by the court.”
8. The Deputy Registrar was correct to hold that since the matter was settled by consent, the value of the subject matter was pegged on the settlement sum of KES. 5,570,000.00. Although, the Client argues that the Deputy Registrar ought to have applied Schedule 6 Part 1 Para 1(b) which provides that when a suit is determined in a summary manner the instruction fee shall be 75% of the fee chargeable under Para. 1(b) of the Order but this was not necessary since the Party and Party Costs had been agreed at KES. 750,000.00. The duty of the Deputy Registrar was to increase this amount by one-half in accordance with Schedule 6 Part B. This is what the Court of Appeal stated in *Otieno Ragot & Company Advocates v Kenya Airports Authority* NRB CA Civil Appeal No. 39 of 2017 [2021] eKLR that:

“[O]nce the instruction fee in the party and party costs are ascertained, they become the basis of the computation of the instruction fees in the Advocates and client bill. The instruction



fees in the party and party bill is then increased by one-half to arrive at the instruction fees for the Advocate and client bill. No further exercise of discretion is required at this point."

9. Although the Advocates did not file a reference, a reversal of the decision of the Deputy Registrar would, in my view, disadvantage the Client, who would end up paying more than what has been certified. For those reasons, I decline to intervene and therefore dismiss the Reference.
10. The Chamber Summons dated 13<sup>th</sup> October 2021 is dismissed with costs to the Advocates assessed at KES. 30,000.00.

**SIGNED AT NAIROBI**

**D. S. MAJANJA**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2022.**

**A. MSHILA**

**JUDGE**

Court Assistant: Mr M. Onyango

Mr Mbabu instructed by Lawrence Mbabu and Associates Advocates for the Applicant/Client.

Mr Murambi instructed by Musyoka Murambi and Associates Advocates for the Respondent/Advocates.

