



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 140 OF 2013**

**HENRY MULI MUNGUTI Suing on his own**

**behalf and on behalf of GOOD HOPE**

**REHABILITATION CENTRE.....APPLICANT**

**V E R S U S –**

**MARTIN MISCHRICK, JENIFFER OTIN & FRANCIS KIETI**

**(Sued on their own behalf and on behalf**

**GOOD HOPE REHABILITATION CENTRE.....1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF SOCIETIES.....2<sup>ND</sup> RESPONDENT**

**KENYA COMMERCIAL BANK.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Henry Muli Munguti, the applicant herein, took out the chamber summons dated 21.8.2017 in which he sought for the following orders:

***1. The learned taxing officer's decision dated 17<sup>th</sup> August 2017 taxing items 1-36 of the 1<sup>st</sup> respondent's party and party bill of costs dated 20<sup>th</sup> September, 2016 in the sum of kshs.599,221 be set aside.***

***2. The 1<sup>st</sup> defendant's bill of costs be remitted to a different taxing officer for fresh taxation.***

***3. The plaintiff be awarded costs for the reference.***

2. The summons is supported by the affidavit of the applicant sworn on 22.8.2017. It would appear the summons was served but none of the respondents deemed it fit to file a response. When the summons came up for interpartes hearing, this court with the approval of the parties, gave directions to have the same disposed of by written submissions.

3. I have considered the grounds stated on the face of the summons plus the facts deponed in the supporting affidavit. I have also considered the written submissions. The history of the summons can be discerned from the material placed before this court. The record shows that on 26.4.2013 the applicant herein suing on his own behalf and on behalf of Good Hope Rehabilitation Centre, filed a plaint seeking for injunctive and declaratory orders against Martin Mischrick, Jennifer Otin, Francis Kieti (sued on their own behalf and on behalf of Good Hope Rehabilitation Centre), the Registrar of Societies and Kenya Commercial Bank Ltd, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents respectively. The 1<sup>st</sup> respondent successfully applied for the suit to be dismissed for want of prosecution. Thereafter the 1<sup>st</sup> respondent filed a party and party Bill of Costs dated 20.9.2013 and sought to be paid ksh.1,202,851/37. The taxing officer in her decision delivered on 17.8.2017 assessed the Bill of Costs at kshs.599,221/=. Being aggrieved by the taxing officer's decision, the applicant filed an objection pursuant to Rule 11(1) of the Advocates (Remuneration) Order and thereafter filed the summons dated 21.8.2017, the subject matter of this ruling. In the aforesaid summons, the applicant challenged the awards given in 33 items in the Bill of Costs.

4. The record shows that the 1<sup>st</sup> respondent had asked for ksh.970,000/= for instructions fees. The 1<sup>st</sup> respondent put the value of the suit properties at Ksh.50 million. The learned taxing officer awarded ksh.400,000/= on this item. It is the submission of the applicant that the assessment was manifestly excessive and was not justified in the circumstances of this case. I have perused at the plaint and it is clear that no value was attached to the subject matter of the suit. The learned taxing officer clearly stated that the applicable law was Schedule VI of the Advocates (Remuneration) Order (2009). The learned taxing officer found that the value of the subject matter of the suit cannot be determined from the pleadings and or judgment. She then assessed instructions fees at ksh.400,000/= and further stated that the figure was reasonable. The applicant has complained that the figure given appears to be 60 times the amount allowed to be charged under Schedule VI(1) of the Advocates (Remuneration) Order, 2009. With respect, I agree with the submissions of the applicant. The learned taxing officer did not indicate whether the matter was complex. I find the figure to be grossly exaggerated hence the assessment must be interfered with.

5. The applicant also challenged the award on getting up fees. He pointed out that the award was not justified because the suit never went for hearing. The record shows that the 1<sup>st</sup> respondent did not file a defence. The suit was basically dismissed for want of prosecution. I agree with the applicant that the taxing officer fell into error in awarding getting up fees for a case that had not been set down for hearing. I find that she applied the wrong principle in making the award.

6. In respect of the other items (i.e items no. 3 – 36) the applicant submitted that they were not axed to scale. The record shows that the learned taxing officer stated in the reasons she provided in respect of most items that they were drawn to scale. It was imperative for the learned taxing officer to clearly state in her ruling the relevant rule and amount prescribed so that the same can be assessed against the figures proposed in the Bill of Costs. Having failed to do so, the learned taxing officer erred.

7. In the end, I find the summons to be meritorious. It is allowed.

Consequently, the taxing officer's assessment of costs is set aside. In the circumstances of this case there is need for the Bill of Costs to be taxed afresh. The Bill of Costs to be heard afresh by another taxing officer other than Hon. F. Rashid.

**Dated, Signed and Delivered in open court this 18<sup>th</sup> day of May, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Applicant

.....for the Respondent