



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL CAUSE NO 182 OF 2017

HARRY BOB MOSI T/A Mosi & Co. Advocates.....APPLICANT

VERSUS

SAMUEL M. ONYANGO t/a S.M.Onyango & Associates Advocates.....RESPONDENT

RULING

1. This is a reference from a decision of the Taxing Officer on the respondent's bill of costs dated 10th April, 2017. The Bill of Costs was taxed on 27th June, 2018 for Kshs. 124,615/- and a certificate in respect thereof was issued on 4th July, 2018.

2. The Applicant's Chamber Summons application dated 20th July, 2018 and filed on even date is brought under the provisions of Rule 11(2) of the Advocates (Remuneration) Order. It seeks the following orders:-

1. That this Honourable Court be pleased to set aside the Ruling of the Taxing Master delivered by Hon. P.W.Mbulikah, Deputy Registrar on 27th June, 2018

2. That this Honourable Court directs that the Applicant's Bill of Costs be taxed afresh

2. The motion is premised on the grounds among others that the subject matter of the respondent's bill of costs was not Kshs. 2,000,000/- but transfer of the suit to Nairobi

3. The motion is also supported by an affidavit sworn by the applicant on 20th July, 2018 in which he reiterates the grounds on the face of the application

4. The reference is opposed on the basis of a replying affidavit sworn by the respondent who avers that the Taxing Master acted rightfully in finding that the subject matter of the suit application was the same subject matter of the suit which is pleaded to be Kshs. 2,000,000/-.

Analysis and Determination

5. I have carefully considered the reference in the light of the affidavits and the submissions on record.

6. There is no dispute that the subject matter in ***Winam Civil Case No. 33 of 2016*** which gave rise to this application is Kshs. 2,000,000/- . That is not however the same value of the subject matter in the application dated 25th August 2017 which sought an order of transfer of ***Winam Civil Case No. 33 of 2016*** from Winam to Nairobi. To hold otherwise will subject the applicant to double taxation in the event that he loses that case and the respondent will have been improperly enriched.

Decision

7. I am convinced that the Taxing Master erred in principle. It is therefore hereby ordered that

1. The Ruling of the Taxing Master delivered by Hon. P.W.Mbulikah, Deputy Registrar on 27th June, 2018 be and is hereby set aside

2. This Honourable Court directs that the Applicant's Bill of Costs dated 10th April, 2017 be taxed afresh

DATED AND DELIVERED ON THIS 30th DAY OF October 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant - Ms Ayieta

Respondent - N/A