

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. CAUSE NO. 739 OF 2014

MURIU MUNGAI & CO. ADVOCATESADVOCATE/RESPONDENT

- V E R S U S -

NEW KENYA CO-OPERATIVE CREAMERIES LTDCLIENT/APPLICANT

RULING

1) New Kenya Cooperative Creameries Ltd, the applicant herein, took out the summons dated 16th December 2016 pursuant to the provisions of paragraphs 11(1), 11(2) and 12 of the Advocates Remuneration Order whereof it sought for the following orders:

1. THAT the taxing master's decision of allowing ksh.198,750/= as basic instruction fees in respect item (1) of the advocate/client bill of costs dated 27th August 2014 in the ruling delivered on 29th March 2016 be varied and/or set aside.

2. THAT the honourable court in the spirit of expeditious and timely disposal of the subject matter be at liberty to re-tax the said item (1) with a view of reducing the fees payable under the said item and/or in the alternative, the matter be referred back for re-taxation before another taxing master on such guidelines that the honourable court may deem just and appropriate to issue.

3. THAT the costs of this application be provided for.

2) The summons is supported by the affidavit of Vivianne Wachanga. When served, the firm of Muriu Mungai & Co. Advocates, the respondent herein, filed a replying affidavit to oppose the summons.

3) When the reference came up for hearing, learned counsels appearing in the matter made oral submissions. I have considered the grounds stated on the face of the summons and the facts deponed in the supporting and opposing affidavits. I have further considered the oral rival submissions. The main item which was being contested is the award on the instructions fees where the taxing officer awarded the respondent ksh.198,750/= vide her ruling delivered on 29.03.2016. It is the applicant's argument that the taxing officer erred in making the award without taking into account the nature of the transaction and the fact that the advocate did not execute the instructions given therefore he was not entitled to claim the fees in full. The applicant further pointed out that the taxing officer erroneously relied on the value of the property instead of deciding the matter under Section 18(f) as read together with schedule 5 of Order. The amount awarded by the taxing officer on the item is said to be manifestly excessive.

4) On his part the respondent argued that the issue touching on the valuation of the suit property was not raised before the taxing officer. It was pointed out that there was a deed of assignment which had been registered. The respondent further argued that he had been 90% of the work hence the award on instructions fee should not be disturbed.

5) The respondent conceded in its submissions that the taxing officer relied on the estimated value ksh.15,000,000/=.

6) The point of departure between the parties on the issue at hand is whether or not the respondent was entitled to peg his claim for fees upon ksh.15,000,000/=. It is the applicant's argument that the

respondent/advocate was not entitled to full fees. There is no doubt that the client withdrew instructions from the advocate midstream.

7) In the circumstances the question which must be answered is whether or not the advocate was entitled to full fees. It is clear from the ruling of Hon. R. N. Makungu, learned Deputy Registrar that the taxing officer heavily relied on the average market value to determine instructions fees due to the advocate. The taxing officer also indicated in her ruling that she considered the nature of the work that was done, like doing the search and conducting preliminary investigations into the title and researching on the mode of transferring such title. It is clear to me that the learned taxing officer did not take into account the fact that the advocate/respondent did not complete the tasks he was instructed by the client/applicant. Therefore it was necessary for the taxing officer to take into account the extent or amount of work done. The award on instructions fees was therefore an erroneous estimate. For this reason, I find merit in the summons. Consequently, the taxing officer's award on instructions fees is set aside. The bill on the item to be remitted for a fresh taxation by another taxing officer other than Hon. R. N. Makungu. Each party to bear its own costs.

Dated, Signed and Delivered in open court this 29th day of September, 2017.

J. K. SERGON

JUDGE

In the presence of:

for the Respondent

for the Applicant