



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 245 OF 2008

IN THE MATTER OF THE ADVOCATES ACT AND THE ADVOCATES REMUNERATION ORDER

AND

IN THE MATTER OF TAXATION OF THE ADVOCATE-CLIENT BILL OF COSTS IN HCCC NO. 167 OF 2007 (NAIROBI)

BETWEEN

KAMAU KURIA & KIRAITU ADVOCATES.....APPLICANT

VERSUS

- 1. ARTHI HIGHWAY DEVELOPERS LIMITED**
- 2. ONSEMUS KIMANI NGUNJIRI**
- 3. FRANKLIN KAMATHI KAMAU.....RESPONDENTS**

RULING

1. Before me is the reference by Chamber Summons dated 21st May, 2014 seeking to vary or set aside the decision of the taxing master contained in her a made on 11th May, 2010. It is premised on the grounds on the body of the application and the Supporting Affidavit of Gacheru Ng'ang'a sworn on 21st May, 2014.
2. It was averred that the Applicant had instructions to act for the Defendants (Respondents) in Nairobi High Court ELC No. 167 of 2007 defended and opposed an application for interlocutory reliefs. The Applicant however ceased to act for the Respondents on 24th September, 2008 and filed its Advocate-Client bill of costs. The bill was taxed at KShs.741,349/= on 12th February, 2009 but was set aside by Respondents. It was then taxed again at KShs.80,743/32 on 11th May, 2010. The Applicant lodged an objection on 17th May, 2010 by the taxing officer but there was delay in supplying the reasons for her taxation. That on 13th May, 2014 when the Applicant made further reminder and perused the court record, it was discovered that the taxing officer's ruling had been typed but that the Applicant was not notified.
3. The Applicant contended that the taxing officer erred in principle and calls for this court's intervention, men as that the taxing officer failed to hold that the value of the subject matter could be determined from the defence as KShs.30,000,000/= and awarded a low instruction fees of KShs.35,000/=; that the taxing officer erred in holding that the parent suit where the Applicant acted was an application instead of holding that the Applicant's instruction fees were to defend the suit. It was also contended that the taxing officer erred in applying schedule VI (1) (i) (j) for prerogative orders which was not the applicable scale. Although the Respondent's were served,

they never opposed the application.

4. In **Premchand Raichand & Another v. Quarry Services E.A. Ltd & Others (1972) E.A.**, it was held that a court will not interfere with a taxing officer's decision on taxation, unless the decision is based on an error of principle or the fees awarded is manifestly excessive. In view of the foregoing, I opine that the issue that fall for determination is whether the taxing officer exercised her discretion and took into consideration the relevant matters pertaining to the issue in question.
5. I have seen the pleadings filed in the parent suit. The claim in the Plaintiff was for injunctive and declaratory orders. The declarations were in respect of transactions pertaining to L.R. No. 7149/10 registered under title Number I.R. 30601. Paragraph 5 of the 1st Defendant's defence pleaded that the consideration for the subject property as agreed between the Plaintiff and 1st Defendant in that suit was KShs. 30 Million. From the pleadings, what was in dispute in that suit was the validity of transfer of the subject property to the 1st Respondent. It is clear from the Plaintiff that there was no monetary claim made. However, the Defence disclosed the value of the property, the subject of the suit. That value was given as Kshs.30 Million.
6. In the case of **Joreth Ltd Vs Kigano & Associates 2002 IEA 92.** The Court of Appeal held that the value of the subject matter for purposes of assessing costs must be derived from the pleadings. Since the declaratory orders sought in the Plaintiff were directed at the subject property and the value of the subject was expressly disclosed in the Defence. I am of the view and so hold that the value of the subject matter was ascertainable from the pleadings. In so far as the taxing officer held that the value of the subject matter could not be defined from the Plaintiff, with respect she fell into error.
7. Further in holding that what was sought were prerogative orders, the taxing officer fell into error. The taxing officer fell into error of principle and the decision cannot stand.
8. Accordingly, the application is found to be meritorious and the same is allowed. Let the bill of costs be taxed afresh before another taxing officer of this court. The costs are awarded to the applicant in any event.

Dated, Signed and Delivered at Nairobi this 20th day of February, 2015

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A MABEYA

JUDGE