



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. APPL. NO.358 OF 2005

IN THE MATTER OF APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

REPUBLICAPPLICANT

VERSUS

THE LAND ADJUDICATION OFFICER

BONDO SIAYA AND BUSIARESPONDENT

PELESIA ADHIAMBO.....1ST INTERESTED PARTY

JARED GILO.....2ND INTERESTED PARTY

EXPARTE

JAMES ADHIAMBO

DENNIS AWANA

RULING

1. The applicant's Chamber Summons dated 23.2.11 prays that:

- a. **The decision of the taxing officer made on 25/10/10 be revised and its decision on items 1, 11, 31 and 34 be set aside and disallowed;**
- b. **The amount in respect of VAT and the grand total be adjusted accordingly;**
- c. **The court remits the matter for re-taxation by a different taxing officer or alternatively proceeds to tax the costs accordingly.**

The main contention by the applicant is that there were no reasons advanced by the taxing master in arriving at the award and in particular under items 1, 11, 31 and 34. From the bill of costs dated 1.4.09 the respondent under item 1 had asked for Kshs.150,000/= but was awarded Kshs.50,000/=. Under item 11 he asked for Kshs.3600/= but was awarded Kshs.1,500/= and under item 31 was awarded Kshs.3600/= after asking for Kshs.7,000/=.

2. The applicant did apply for reasons from the taxing master and from the courts proceedings of 2.11.10 the taxing master only stated that he considered the Remuneration Order of 1997 in arriving at his decision.

3. The respondent has opposed the application arguing that what the taxing master awarded him was fair

and reasonable and that the application ought to be dismissed for being vexatious and scandalous.

4. I have carefully perused the bill of costs together with the Reference as well as the parties submissions. The provisions of Rule 11(2) of the Advocates Remuneration Order states as follows:

“11(2). The taxing officer shall forthwith record and forward to the objector the reasons for his decision on the items and the objector may within 14 days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned setting out the grounds of the objection..”

5. It presupposes that the taxing officer shall give out the reasons for such decision. Having perused the courts proceedings it appears from the decision of the taxing master that he simply considered the provisions of the 1997 Remuneration Order. Those provisions respectfully cannot be called reasons. What the drafters of the afore quoted rule expected was for the taxing master to give cogent reasons for his decision.

6. Consequently I do not think that the taxing master gave any tangible reasons for awarding the respondent the amount he did. The rules provide that this court could go ahead and tax the bill but from my considered opinion I find that the parties ought to appear before the taxing master so as to agitate their positions afresh.

7. For the foregoing reason I allow the application as prayed save that the parties shall subject themselves to the taxing master for a fresh taxation of the bill dated 1.4.09. Each party shall bear their respective costs.

Dated, signed and delivered this 28TH day of OCTOBER 2015.

H. K. CHEMITEI

J U D G E