



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
MISC.APPLICATION NO. 146 OF 2009

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN MANGA LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

GEORGE H.O. MBOGA.....2ND RESPONDENT

DISTRICT LAND REGISTRAR, NYAMIRA DISTRICT.....3RD RESPONDENT

THE PRINCIPAL MAGISTRATE NYAMIRA.....4TH RESPONDENT

EXPARTE

MBOGA ARICHA

RULING

1. What is before me is an application brought by the 2nd respondent by way of Chamber Summons dated 19th December, 2012 under Rule 11 of the Advocates Remuneration Order (hereinafter referred to as “**the order**”). The 2nd respondent was aggrieved by the decision of the taxing officer, Hon. Lucy Kaitany, RM made on 6th December, 2012 by which she taxed the ex-parte applicant’s bill of costs dated 17th September, 2012 at Ksh. 102,557.00. In this application, the 2nd respondent is seeking the review of the said taxing officer’s decision on the ground that the amount that she awarded to the ex-parte applicant was manifestly excessive and as such should be reduced.
2. The ex-parte applicant had brought a judicial review application against the respondents on 5th January, 2010. The ex-parte applicant sought orders of certiorari, prohibition and mandamus. The application was opposed by the 2nd respondent. The application was heard by Sitati J. who in a ruling delivered on 31st July, 2012 allowed the application with costs to be paid by the 2nd respondent. The ex-parte applicant filed his party/party bill of costs on 10th September, 2012 for taxation. The bill was drawn to the tune of Ksh. 165,777.00. The ex-parte applicant’s bill was argued before the taxing officer; Hon. Lucy Kaitany on 1st November, 2012. The ex-parte applicant’s bill had a total of 35 items. The 2nd respondent opposed all the items in the bill except items 6, 9, 12, 14, 16, 18, 23, 24, 26, 28, 29, 30, 31, 32, 34 and 35 which he admitted were drawn to scale. The advocates for the parties made submissions with regard to the contested items and in a ruling that was delivered on 6th December, 2012 as a foresaid, the taxing officer taxed the ex-

parte applicant's bill at Ksh. 102, 557.00. The sum of Ksh. 63, 220.00 was taxed off.

3. When the 2nd respondent's application herein came up for hearing before me on 8th May, 2013, the 2nd respondent's advocate, Mr. Okenye submitted that the 2nd respondent was aggrieved by the taxing officer's decision as concerns items 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 19, 20, 21, 25, 27 and 33. The advocate for the 2nd respondent submitted that these items were not taxed in accordance with the scale. Counsel however did not give any indication to the court as to what in his opinion should have been a reasonable amount to be awarded by the taxing officer for these items.
4. I have looked at the ex-parte applicant's bill of costs that was before the taxing officer, the submissions that were made by the advocates for the parties on the contested items and the ruling of the taxing officer on those items. I am not satisfied that the amounts that were awarded by the taxing officer to the ex-parte applicant on the contested items which has given rise to this reference were excessive. This court can only interfere with the decision of the taxing officer if it is satisfied that the bill as taxed was manifestly excessive. See, the cases of **Ouma vs. Warega (1982) KLR 288** and, **Rogan-Kamper vs. Lord Grosvenor (No.3) (1976-80)1 KLR 665**. Under item 1 which was instruction fees, the ex-parte applicant had claimed Ksh. 100,000.00 against a minimum of Ksh. 28,000.00 allowed under the Order. The taxing officer considered the fact that the application for judicial review was opposed by the 2nd respondent and that what was in dispute was a parcel of land. Taking into account these factors, she concluded that a sum of Ksh. 60,000.00 was fair and reasonable for instruction fees. She taxed off a sum of Ksh. 40,000.00 from the amount that had been claimed by the ex-parte applicant. I am of the view that in all the circumstances of this case, the sum of Ksh. 60,000.00 that was awarded by the taxing officer was not manifestly excessive as claimed by the 2nd respondent. Items 2, 3, and 4 of the bill concerned perusals. The taxing officer taxed item 2 at Ksh. 63 in accordance with Schedule VI (8) (b) of the Order and items 3 and 4 at Ksh. 42 per folio as provided for under Schedule VI (8) (a) of the Order. The taxing officer cannot be faulted in his award with respect to these items. Items 5, 7, 9, 11, 19, 21, 25 and 27 concerned fees for drawing up documents and pleadings. The fee chargeable for; item 5 was assessed at Ksh. 126 per folio under Schedule VI (4) (d) of the Order, items 7, 9, 11 and 21 were assessed at Ksh. 735 for four folios or less in accordance with Schedule VI (4) (a) of the Order, item 19 was assessed at Ksh. 168 in accordance with Schedule VI (4) (f) of the Order, item 25 was assessed at Ksh. 126 per folio in accordance with Schedule VI (4) (e) and item 27 was assessed at Ksh. 126 per folio under Schedule VI (4) (d) of the Order. Again, all these items were taxed in accordance with the scale and as such I don't see how the taxing officer can be faulted in her assessment on these items. Items 8 and 13 were concerned with making of copies. These items were assessed as drawn as they were drawn in accordance with Schedule VI (5) of the Order. Items 10, 15 and 20 were concerned with attendance. Item 10 was assessed at Ksh. 210 in accordance with Schedule VI (7) (b) of the Order, item 15 was assessed at Ksh. 840 in accordance with Schedule VI (7) (d) (i) of the Order and item 20 was assessed at Ksh. 3360 in accordance of Schedule VI (7) (d) (iii) of the Order. These items were also assessed correctly by the taxing officer. This leaves item 33 that dealt with service. The ex-parte applicant had claimed Ksh. 6000.00 for service of the order granting leave and the judicial review application upon all the respondents herein. The taxing officer taxed off Ksh. 2000.00 and allowed Ksh. 4000.00 under this item. Under Schedule VI (9) (a) of the Order a sum of Ksh. 1000.00 is allowed for effecting service within a distance of 3 kilometers of the High Court registry. I have noted from the court record that the documents aforesaid were served upon all the respondents. The 3rd and 4th respondents were served at Nyamira while, the 1st respondent was served at West Mugirango, Magombo Division. I am of the opinion that a fee of Ksh. 4000.00 awarded by the taxing master for such service was not excessive.
5. The upshot of the foregoing is that the 2nd respondent has not persuaded me that the sum of Ksh. 102, 557.00 that was awarded to the ex-parte applicant by the taxing officer was manifestly excessive so as to warrant interference by the court. I therefore find no merit at all in the 2nd respondent's application dated 19th December, 2012. The ex-parte applicant's advocate Mrs. Asati

had objected to the 2nd respondent's application on other grounds that I have not dealt with. This is not because the said grounds were of little significance. I have intentionally decided not to deal with the same in view of the conclusion that I have already reached in this matter on the main substantive ground on which the application was brought and opposed. The Chamber Summons application dated 19th December, 2012 is accordingly dismissed with costs to the ex-parte applicant.

Dated, signed and delivered on 30th day of August, 2013.

S. OKONG'O,

JUDGE

In the presence of:-

Miss. Sagwa for the ex-parte applicant

No appearance for the 2nd respondent

Bibu Court Clerk.

S. OKONG'O,

JUDGE.