

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

MISCELLANEOUS CAUSE NO. 491 OF 2011

P. K. MTANGE & CO. ADVOCATES APPLICANT

VERSUS

ISAAC KAMAU NDIRANGU CLIENT/RESPONDENT

R U L I N G

1. The Application before this Court is the Applicant/Advocates' Notice of Motion dated 8th May 2013 seeking that judgement be entered as against the Respondent in the sum of Shs. 534,688/- being the taxed costs as per the Certificate of Taxation issued by the Deputy Registrar of this Court on 12th January 2012. The same is brought under **section 51 (2)** of the *Advocates Act* and **Rule 7** of the *Advocates (Remuneration) Order*. It is grounded upon the basis that the Respondent herein instructed the Applicant to act for him in the conveyance for the sale of a 10.5 acre parcel of land to be excised from his overall property registered under L. R. No. 12239. The Applicant/Advocates' Bill of Costs had been filed on 30 May 2011, the Certificate of Taxation had been issued as above and no reference has been filed nor has the said Certificate been set aside or varied by this Court. As such, the Certificate is final as to the amount payable by the Respondent to the Applicant/Advocates and the former has failed to settle the amount despite service upon it of the said Certificate. The Application is supported by the Affidavit of **Philip Kamidi Mtange** sworn on 8th May 2013, the deponent practising under the style of P. K. Mtange & Co., Advocates.
2. The Client/Respondent filed a Replying Affidavit to the said Application dated 24th July 2013. The Respondent agreed that on or about 11th June 2009, he had engaged the services of the Applicant/Applicant to draw up a sale agreement between himself as the vendor and one Bao Ping as the purchaser for an 11.5 acre parcel of land to be excised from his title to L. R. No. 12239. The Respondent noted that the total purchase price for the said plot with Shs. 126,500,000/-. The Respondent further agreed that the purchaser paid the entire purchase price to the Applicant/Advocates' firm and the plot was duly transferred and registered in her name. The Respondent stated that the purchaser had paid the initial deposit sum of Shs. 12,650,000/- and the same was remitted to him less the sum of Shs. 650,000/- which the Applicant/Advocate retained towards his fees. Further, on 21st May 2010, the Respondent stated that he had paid the Applicant/Advocate an amount of Shs. 100,000/- and attached a copy of the duly signed acknowledgement slip. As a result, the Applicant/advocate had received from the Respondent a total of Shs. 750,000/-. Such had been paid as against the Certified costs of Shs. 524,688/-. Consequently, the Respondent maintained that he had paid more than he should have with reference to the Certificate of Taxation.
3. When the matter of the Application came before this Court on 25th July 2013, Mr. Mtange noted that when the taxation of the Bill of Costs had come before the Taxing Officer, it was agreed that all matters in relation thereto would be determined on the file being *HC Misc.Cause No. 489 of 2011*. He produced before Court a copy of the submissions as raised before the Taxing Officer in that cause. Mr. Gichugu appearing for the Client/Respondent stated that he fully relied upon the Replying Affidavit dated 24th July 2013. No mention had been made by the Applicant/Advocate of the payments made by the Respondent/Client totalling Shs. 750,000/-. He asked that the said Application be marked as "compromised" and that the amount paid by the Respondent/Client be set off as against the taxed costs. In a brief reply, Mr. Mtange noted that the Bill of Costs had sought an amount of Shs. 1.5 million. The same argument that was being raised before this Court

- as to the payment of Shs. 750,000/- had been raised before the Taxing Officer who had taxed off the said amount leaving the balance due. Counsel asked the Court to allow the Application and enter Judgement as prayed therein.
4. I have noted in the copies of the proceedings and documentation placed before the Taxing Officer when the Applicant/Advocate's Bill of Costs dated 14th April 2011 came for taxation. I am entirely satisfied that the work undertaken by the Applicant/Advocate on behalf on the Respondent/Client was indeed carried out and completed. The Bill of Costs itself detailed an instruction fee of Shs. 632,500/- and, together with ancillary matters, came to a subtotal of Shs. 634,045/-. Added to this was an amount of Shs. 317,022.50 which was the instruction fee increased by half. VAT at 16% in the amount of Shs. 152,170.80 was added giving a grand total of Shs. 1,103,238.30. The Taxing Officer taxed off the amount of Shs. 332,500/- from the instruction fee and ended up with a grand total of Shs. 524,688/- (Shs. 578,550 /- taxed off). Nowhere to be seen was the said amount of Shs. 750,000/- or, indeed, Shs. 650,000/- which the Applicant/Advocate stated had been taxed off the said Bill of Costs. It would seem therefore that the Respondent/Client is correct in his opinion that he has in fact overpaid for the said Bill of Costs.
 5. However, somewhat fortunately for the Applicant/Advocate, it is not clear to this Court, under just which Schedule of the Advocates Remuneration Order, the Applicant/Advocates' said Bill of Costs was drawn up and taxed. As this was a conveyancing matter as between advocate and client, the Bill of Costs should probably have been drawn up under Schedule I of the Order. It appears to have been drawn up under Schedule V thereof. Before the Taxing Officer, it seems that the Respondent/Client's advocates argued that the only work done by the Applicant/Advocate in connection with the conveyancing matter was the drawing up of the Agreement for Sale. From the papers supplied to this Court by the Applicant/Advocate, it would seem quite clear that this was not the only work undertaken by the Applicant/Advocate over a considerable period of time. Either way, neither Schedule I nor Schedule V provides for any increase (by one half) of the prescribed fee to take into account client/advocate as opposed to party/party fees. In my opinion, the work carried out by the Applicant/Advocate was of a non-contentious nature covered under Schedules I to V of the Advocates Remuneration Order which do not provide for any add-ons in relation to the client/advocate relationship.
 6. Accordingly, and with regard to **section 51 (2)** of the *Advocates' Act* under which the Applicant/Advocate's said Application is brought, I set aside the Certificate of Costs dated 12th January 2012 with the direction to the Taxing Officer that the Applicant/Advocates' Bill of Costs be re-taxed taking into account the provisions of Schedule I and/or Schedule V. As a result, the Applicant/Advocates' Notice of Motion, dated 8th May 2013, is stood over generally pending the reassessment of the Bill of Costs by the Taxing Officer and the issuance of a fresh Certificate of Costs or a confirmation that the Certificate of Costs dated 12th January 2012 stands. At this stage, there shall be no Order as to costs.

DATED and delivered at Nairobi this 1st day of August, 2013.

J. B. HAVELOCK

JUDGE