



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 1054 OF 2001

IQBAL SINGH RAI.....PLAINTIFF

VERSUS

MARK LECCHINI.....1ST DEFENDANT

REGISTRAR OF TITLES.....2ND DEFENDANT

RULING

Coming before me for determination is the Chamber Summons dated 11th March 2013 in which the Defendant/Applicant sought for orders that:

1. Spent
2. Spent
3. The 1st Defendant/Respondent's objection to the decision of the Taxing Officer on items 1 and 334 of the Plaintiff's Bill of Costs filed on 9th August 2011 be heard and decided.
4. The costs of this application be provided for.

The application was premised on the grounds appearing on the face of it together with the Affidavit of George Gitonga Murugara sworn on 11th March 2013 in which he stated that the Plaintiff filed a bill of costs dated 9th August 2011 and filed on 10th August 2011 (hereinafter the "Bill of Costs") in respect of which the Taxing Officer delivered a ruling on taxation on 24th January 2013. He further stated that the 1st Defendant objected to the decision taken by the Taxing Officer on items 1 and 334 of the Bill of Costs on the following grounds:

1. The Taxing Officer correctly held that the basic instruction fees under Schedule VI (1)(l) of the 1997 Advocates Remuneration Order as being Kshs. 6,000/- and rightly found that the value of the subject matter could not be determined from the pleadings but erred in assessing the instructions fees for this particular suit at Kshs. 1 million, nearly 170 times the basic instruction fees, having failed to show that this matter was an exceptional and unusual matter to warrant that sum.
2. The Taxing Officer erred in finding that the getting up fee was Kshs. 333,334/-, being a third of the wrongly awarded instruction fees of Kshs. 1 million.

3. That this suit was not overly complex shown by the straight forward judgment, it only took 10 years to settle due to the backlog of cases in the court, that the documents relied on by the parties were not voluminous and that the research into the law by both parties was not overly intensive to merit the increase of the instruction fee to almost 170 times which is manifestly and excessively high.

The application is opposed by the Plaintiff/Respondent who filed his Grounds of Opposition dated 22nd March 2013 in which he stated that the said reference is bad in law and an abuse of this Court's process as it is an appeal from the decision of the Taxing Officer couched as a reference, that the Taxing Officer did not make any error of principle in her ruling dated 24th January 2013, that by the 1st Defendant's own admission its reference is time barred and that the 1st Defendant has sought injunctive relief orders under this reference which orders are untenable under a reference and ought to be struck out.

Both the Plaintiff/Respondent and the 1st Defendant/Applicant filed and highlighted their written submissions which have been taken into consideration by this court including the authorities submitted by both sides.

The 1st Defendant/Applicant has disputed the taxation on only two items on the Bill of Costs, namely item 1 and 334. Item 1 of the Bill of Costs is the instruction fee and was taxed by the Taxing Officer at Kshs. 1 million. It is true that the instruction fees under Schedule VI (1)(l) of the 1997 Advocates Remuneration Order which applies where the matter involves to sue or defend in any case not provided for above is such sum as may be reasonable but not less than Kshs. 6,000/-. The proviso I to that states as follows:

“the taxing officer, in the exercise of this discretion shall take into consideration the other fees and allowances to the advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the trial judge, and all other relevant circumstances.”

I have read through the ruling delivered by the Taxing Officer on 24th January 2013. In that ruling, the Taxing Officer clearly recognized and exercised her discretion to increase the prescribed minimum instruction fee of Kshs. 6,000/-. The considerations she took into account in this respect were the complexity of the case which she termed as complex indeed, the fact that the case proceeded to full trial and took close to ten years to determine, the fact that the documentation was voluminous pointing to the fact that considerable perusal was undertaken and that considerable research was done by the advocate. She further highlighted the fact that land in Kenya is emotive and that this adds weight to her belief that this was a very important case to the plaintiff. It is on the basis of these considerations that she considered the Plaintiff's request for instruction fees of Kshs. 2 million but taxed off Kshs. 1 million, leaving the Plaintiff with Kshs. 1 million. The 1st Defendant feels that this sum should have been taxed off further to arrive at the sum of Kshs. 200,000/- or thereabouts. The 1st Defendant/applicant has contended that the Kshs. 1 million awarded to the Plaintiff by the Taxing Officer is manifestly excessive and merits interference by this court.

To my mind, taxation of bills of costs is not an exact science. The same remains a matter of opinion as to what amount is reasonable given the circumstances. In my reading of the ruling, I did not come across anything that would suggest that the Taxing Officer applied the wrong principles or considered irrelevant and extraneous matters in determining the award on instruction fees. To the contrary, it is clear to me from the said ruling that the Taxing Officer addressed her mind to the right considerations and arrived at what I consider a reasonable sum for the Plaintiff's instruction fees. I therefore disagree with the 1st Defendant/applicant that the instruction fee of Kshs. 1 million was manifestly excessive and merits interference by this court. Having found that the Taxing Officer exercised her discretion judiciously according to the law, there is no basis for me to disturb the award of the instruction fees awarded to the Plaintiff under item 1. As for item 334, it is common ground that the amount to be awarded for getting up fees according to the Advocates Remuneration Order should be one-third of the instruction fees. The

Taxing Officer awarded the Plaintiff Kshs. 1 million as instruction fees and 1/3 rd of Kshs. 1 million is Kshs. 333,334/-. The amount taxed in item 334 was therefore correct and this court upholds that award.

In view of the foregoing, I find no merit in the 1st Defendant/Applicant's reference in this matter and I hereby dismiss it with no orders as to costs.

SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF SEPTEMBER 2013

MARY M. GITUMBI

JUDGE