



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI
SUCCESSION CAUSE NO n . 494 OF 1994**

**IN THE MATTER OF THE ESTATE OF MWANGI MBOOTHU
(DECEASED)**

**1. JONATHAN NJUGUNA
MWANGI**

2. PETER KABATHA MWANGI

**3. HANNAH WANGARI
KINUTHIA**

4. SAMUEL GATITU

5. HELLEN WAMBUI ----- APPLICANTS

VERSUS

1. JOHN GITATA MWANGI

**2. JOSEPHAT NJOROGE
MWANGI**

**3. STEPHEN NJUGUNA
MWANGI**

4. CHRISTOPHER MWAURA MWANGI -----RESPONDENTS

R U L I N G

The issue that arose at the time of taxing this bill is whether to bear taxation on schedule 6 (1) (b) or (1)(d) or whether to bear it on schedule 10, of the Advocates Remuneration Order Act. From the outset there is no dispute over the other items listed on the bill. Item No. 70 was then out by consent. The only 2 items being contested are item No. 1 the instructions fees and item No. 13 setting up fees which normally is a third of the instructions fees.

Mr. Mwaura for the Respondents submitted that the applicable schedule is schedule 10 which has express provisions under Probate and Administrative matters. He submitted that where there are specific provisions under the Act it is not open to parties to ignore them. He further submitted that schedule 10 (1) (a) does not even apply to this case, and that the applicable schedule is 10(1)(f) as the matter was brought to Court as an application for dependency.

I have considered submissions of both Counsels and looked at the Advocates Remuneration Order Act. Indeed the matter before the Court fall severely under Probate and administration section which is schedule 10. The matter came to Court by way of an application for reasonable provisions of dependency to be made. To me this falls under schedule 10 (1)(f). Therefore schedule 6 does not apply here since there are specific provisions.

By looking at the proceedings the matter was quite complex. It was a very important matter to the concerned parties, took a long time to conclude and must have caused anxiety. However the proposed fee of Shs. 26 million is too high. Mr. Kathurima suggested a fee of Shs. 20,000/= as adequate. I note under schedule 10 (1) (f) the fee prescribed is too low under these circumstances. It is given as a starting point.

Taking all factors in this one into consideration and bearing in mind these Court order that costs be accorded on the higher scale it is my finding that fees proposed on item No. 1 and item No. 13 are too high considering the applicable schedule here is schedule 10 (1)(f). I would however tax item No. 1 at Kshs. 1,000,000/= (one million) which in my view is reasonable under the circumstances.

Getting up fees are not applicable under schedule 10 and since we are not following schedule 6 where getting up fees are provided for my view is that, that item be and is hereby struck out.

The bill is therefore taxed at Kshs. 1,176,250/= I order accordingly.

Read in the presence of Mr. Kathurima for Applicants and Ms. Kivuva for Respondents. I do not understand the notice and to who it is addressed. However there is a ruling in the file dated 11.7.2001.

MUTUKU

SENIOR DEPUTY REGISTRAR

31/7/2001