



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**MISC. APPLICATION NO. 121 OF 2016**

**IN THE MATTER OF THE ADVOCATES ACT**

**AND**

**IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT**

**GEORGE MIYARE T/A MIYARE & CO. ADVOCATES.....ADVOCATE/APPLICANT**

**VERSUS**

**GEORGE AMOS ODHIAMBO OBALLA BETWEEN.....CLIENT/RESPONDENT**

**RULING**

1. The respondent George Amos Odhiambo Oballa married Joan Abila on 24th November 1996 and they got three children. They had a matrimonial dispute which led the wife to file a cause in the Children Court in Nairobi where on 30th January 2015 she obtained an order to exclude the respondent from their matrimonial home at Karen Country Homes in Nairobi. The order involved his eviction from the home. In response, he filed before the High Court at Nairobi Constitutional Petition No. 39 of 2015 and obtained orders against the eviction. He was represented in the High Court by the applicant George Miyare T/a Miyare & Co. Advocates. On the basis that the respondent had refused to pay his legal fees, the applicant filed a Bill of Costs seeking a total of Kshs.23,518,116/21. Of the figure, Kshs.10,000,000/= represented instruction fees.

2. The Bill was on 4th June 2019 taxed by Taxing Officer Hon. Mukabi Kimani at Kshs.230,892/20. Instructions fees was taxed at Kshs.50,000/= which was increased by ½ to make it Kshs.75,000/=.

3. This reference challenged the figure of Kshs.75,000/= on instructions fees. The applicant's case was that the Taxing Officer arrived at a decision that was contrary to the Advocates Remuneration Order of 2014; that he misapplied the principles of taxation; he proceeded on the basis that the taxation was unopposed which was not true; he failed to appreciate that the matter was complex; he failed to exercise his discretion properly; and that the amount was unsupported and manifestly low in the circumstances.

4. The respondent's response was that he had not been served with the Bill of Costs subject of the reference, and therefore he had not participated in it. He stated that the reference was unmerituous.

5. The applicant was represented by M/s Oriwo and the respondent by Mr Swaka.

6. It is clear that the Bill of Costs had not been defended. The respondent stated so, and therefore the Taxing Officer was right in finding that the Bill of Costs was unopposed. It follows that the Taxing Officer was correct in relying on Schedule 6(1)(j) of the Advocate Remuneration Order of 2014 that provided for a minimum sum of Kshs.45,000/= as legal fees for constitutional petitions and prerogative orders where the matter was not complex or opposed.

7. Was the matter before the High Court a complex one? The Taxing Officer did not think that the matter was complex. He considered the nature of the dispute, the duration the applicant had acted for the respondent (between 23rd April 2015 and 4th August 2016), and all incidental circumstances and, having considered decided cases, allowed Kshs.50,000/= being instruction fees.

8. From the applicant's own documents, the complaint of the respondent that made counsel to go to the Constitutional Court was that the Children Court had sanctioned the eviction of his client from the matrimonial home in excess of jurisdiction and

“without a hearing and/or due process.....”

I agree with the Taxing Officer that there was nothing complicated about the petition. In fact this was an ordinary marital dispute that did not warrant the invocation of the powers of a constitutional court. In Republic -v- Minister of Agriculture & 2 Others Exparte Samwel Muchiri W. Njuguna & Others [2006], it was held that where it is stated that the matter was complex, the complex elements in the proceedings which are intended to guide the exercise to the Taxing Officer's discretion must be specified cogently and with conviction. There is no evidence that the applicant placed, either before the Taxing Officer or before this court, the complex elements in the proceedings before the Constitutional Court. Was there anything novel about the proceedings? Were the proceedings such that they necessitated the deployment of a considerable amount of industry and time? Were the proceedings such that counsel had to file voluminous documentation? The answer to each of these questions has to be in the negative.

9. The applicant complained that the Court did not consider the value of the subject matter which, according to the Bill of Costs, was Kshs.100,000,000/=. The figure represented the value of the house. The Taxing Officer stated that he had considered the nature of the

dispute. In my view, the dispute was not about the recovery of the house from the wife of the respondent. He had been evicted from the house in a dispute over the custody and control of the children, and in what was substantially a marital disagreement. The parties were still married and they neither of them was claiming the determination of rights over matrimonial property.

10. In short, I have considered the Taxing Officer's decision against the evidence that the applicant placed before him and have not been persuaded that the discretion he exercised was based on an error in principle, or that the amount awarded was manifestly low as to justify this court's interference (Joreth Ltd -v- Kigano & Associates, Civil Appeal No. 66 of 1999 ([2002] I EA 92).

11. I dismiss the reference with costs.

**DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 7th day of MAY 2020**

**A.O.**

**MUCHELULE**

**JUDGE**