



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC. APPLICATION NO.10 OF 2018

IN THE MATTER OF W. K. NGENO

T/A NGENOH LESSAN & CO. ADVOCATES.....RESPONDENT/APPLICANT

VERSUS

JOSEPH KIPSIGEI BIEGON & ANOTHER (Suing as personal representatives of the

estate of the late KIPYEGON SANG Alias KIBIEGON ARAP SANG)....RESPONDENT

RULING

1. The Application coming for consideration in this ruling is the reference dated 22/10/2019 seeking the following orders;

i) THAT this court be pleased to vacate and set aside the ruling of the Deputy Registrar Hon. S. K. Ngetich dated 20/6/2018 which taxed the Advocate – client Bill of Costs dated 23/3/2018 at Kshs.997,884 and refer the matter for fresh taxation before a different taxing master.

ii) THAT the costs of this Application be provided for.

2. The Application is based on the grounds on the face of it and supported by the Affidavit of JOSEPH BIEGON the Applicant/Respondent who is the Administrator of the Estate of KIPYEGON SANG ALIAS KIBIEGON ARAP SANG (deceased).

3. The Applicant deposed in the Supporting Affidavit that his family instructed the firm of M/S W.K. NGENOH LESSAN & CO. ADVOCATES to file succession proceedings on behalf of the Estate of KIPYEGON SANG ALIAS KIBIEGON ARAP SANG (deceased).

4. THAT prior to filing the succession proceedings they agreed on the fee required until completion of the succession cause at Ksh.100,000/=.

5. THAT thereafter, the parties executed a land sale agreement for LR No. KERICHO/KABIANGA/28 in which the Advocate purchased part of the land and agreed to process the succession cause matter at a fee of Kshs.100,000/= and the clause is indicated in sale agreement.

6. THAT the Applicant was duped by the Respondent that he was proceeding with the succession cause when it was the bill of costs which was being taxed.

7. THAT the Bill of costs dated 28/3/2018 delivered on 20/6/2018 is greatly exaggerated and the amount taxed is exorbitant in view of the agreement entered into with the Advocate.

8. The Respondent filed a Replying Affidavit dated in which 15/11/2019 in which he denied that he entered into an agreement and further stated that the agreement entered into was a sale of land agreement on fees.

9. The Respondent further said the Kshs.100,000 was deposit and the same was deducted from the amount taxed.

10. I have considered the written submissions filed by both parties. I have also perused the ruling delivered on 20/6/2018 by the taxing master.

11. I find that the Applicant who was present did not bring the alleged agreement on the Advocate's fee to the notice of the taxing master.

12. The Applicant stated in his Supporting Affidavit that he was duped by the Advocate that the matter before court was the succession

cause.

13. The Applicant also claimed that he had entered into an agreement on the fees payable by the Respondent.

14. I have perused the taxation ruling and I find that the issue of the agreement between the advocate and the client did not feature during the taxation. The Applicant said he was not aware the bill of costs was being taxed. He was under the impression that it was the succession case that was being heard.

15. **Section 45(1) (a) and (b) and (6) of the Advocates Act** provides as follows;

“1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may–

(a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate’s remuneration in respect thereof;

(b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate’s instruction fee in respect thereof or his fees for appearing in court or both.....

(6) Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48.”

16. It is in the interest of justice that the taxing master determines whether or not there was a fee agreement between the Applicant and the Respondent.

17. I find that this reference has merit and I allow the same and set aside the ruling delivered on 20/6/2018 together with the certificate of costs dated 6/7/18 and I direct that the Bill of Costs dated 28/3/2018 be taxed a fresh before any other taxing master other than the one who taxed it on 20/6/2018.

Delivered, dated and signed at Kericho this 6th day of November 2020.

A. N. ONGERI

JUDGE