



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. APPLICATION NO 47 OF 2019

PATRICIA OBONG'.....APPLICANT

VERSUS

ENOCK ONJURO OGUT & MARY MAGERE OGUT....RESPONDENTS

RULING

1. By Chamber Summons dated 09th April, 2019, the Applicant seeks orders **THAT**: -

1) That the assessment and award of the taxing master made on 20.02.19 with respect to items 1, 3, 5, 9 and 12 of the bill of costs dated 10.11.17 be set aside and or varied

2) That the Honourable Court be pleased to retax or remit the bill for taxation before a different taxing master

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn by the Applicant on 09th April, 2019 in which she faults the taxing master for taxing the bill on the higher scale.

3. I have carefully considered the reference in the light of the supporting affidavit and written submissions filed on behalf of the parties. From the submission, it is apparent that the Applicant is mainly challenging the instructions fees.

4. In civil litigation, there are two distinct methods of determining fees and these are said to be Party and Party fees and Advocate and Client fees. Party and Party costs are based on the principle that the unsuccessful party in any case must, unless the court otherwise orders for good reason, pay the successful party.

5. It is not disputed that the Respondents' filed a notice to act in person after their advocate had filed the plaint and served it. The Taxing Master's finding that the applicable law with regard to the impugned taxation was Schedule 6 of the Advocates Remuneration Order which provides for assessment of Party and Party Costs in proceedings in the High Court and also applies to proceedings in courts of equal status was therefore well founded.

7. The Taxing Master deduced from the pleadings that the value of the subject matter was not pleaded and taxed item 1 at Kshs. 75,000/- which is the sum applicable for the subject matter whose value is 0 to Kshs. 500,000/-.

8. Whereas it is true that the Respondents had asked for Kshs. 40,000/-, I find that the Taxing Master acted judiciously in awarding the Respondents the costs that they were lawfully entitled to.

9. Accordingly, the Applicant's Chamber Summons application dated 09th April, 2019 is found to have no merit and is disallowed with costs to the Respondents.

DATED AND DELIVERED IN KISUMU ON THIS 10th DAY OF December 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant

For Applicant

1st Respondent

2nd Respondent