



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL CAUSE NO 52 OF 2015

OTIENO C.O.OYAYO & CO. ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

JUNI AWITI ASIYO.....CLIENT/RESPONDENT

RULING

1. This is a reference from a decision of the Taxing Officer on the applicant's bill of costs dated 15th June, 2015. The main item of contention is the commission which was taxed at Kshs.327,600/-. The Applicant's Chamber Summons application dated 2nd June, 2017 and filed on 5th June, 2017 is brought under the provisions of Rule 11(2) and 13 of the Advocates (Remuneration) Order; Section 1A, 1B and 3A of the Civil Procedure Act and Order 51 rule 1 of the Civil Procedure Rules. It seeks the following orders:-

- 1. That the decision of the Taxing Master delivered on 9.12.16 on commission of the Objector's Bill of Costs dated 15.6.15 and the reasoning thereof be set aside***
- 2. The Honourable Court be pleased to re-tax the item on commission***
- 3. In the alternative, The Honourable Court be pleased to remit the item on commission for re-taxation***
- 4. Costs of the reference be awarded to the applicant***

2. The motion is premised on the grounds among others that:

- a. The taxing master erred in principle by failing to take into account the nature and importance of the matter, the amount involved., the interest of the parties as well as the general conduct of the proceedings***
- b. The item on commission as taxed is manifestly inadequate***
- c. The parcel was subdivided into 14 parcels and commission should be taxed on each parcel***
- d. The commission should have been taxed at 10% of the total purchase price of the 14 parcels which amounted to Kshs. 49,000,000/-***
- e. The taxing master used the wrong scale***

3. The motion is also supported by an affidavit sworn by Otieno C. O. Ayayo on 2.6.17 in which he reiterates the grounds on the face of the application.

4. The reference is opposed on the grounds set out in the Grounds of Opposition filed on 27.6.17. The respondent avers that the Taxing Master acted within the provisions of the third scale of Schedule 1 of the Advocates Remuneration Order as directed by the judge and further that the total purchase price on the suit property for which commission was based was Kshs. 21,000,000/- and not Kshs. 49,000,000/- as alleged by the applicant.

Analysis and Determination

5. I have carefully considered the reference in the light of the supporting affidavit, and the grounds of opposition. The issue for determination is whether the sum taxed for commission on item 3 of the Bill of Costs amended on 15.6.15 is manifestly inadequate.

6. Item 3 on the Bill of Costs undoubtedly demonstrates that total purchase price on the suit property for which commission was based was Kshs. 21,000,000/- and not Kshs. 49,000,000/- as alleged by the applicant.

7. By a ruling delivered on 12th May, 2016, Maina J, directed the Taxing Master to re-tax item 3 on commission under the Third scale of Schedule 1 of the Advocates Remuneration Order.

8. The court record shows that item 3 was re-taxed as ordered and the Taxing Master in her exhaustive ruling delivered on 9th December, 2016 taxed the item at Kshs. 327,600/-.

9. I am well aware of the discretion given to the Taxing Officer in taxation matters under Section 27 of the Civil Procedure Act, 2010, and that this court should only interfere with that discretion if there is an error in principle, or if the sum arrived at was either so high or so low as to imply that the taxing officer applied the wrong principles.

10. The Taxing Master applied the purchase price of Kshs. 21,000,000/- as shown on the Bill of Costs and applied the correct Schedule and scale in re-taxing the item on commission. Applicant has failed to demonstrate that the Taxing Master erred in principle.

Decision

11. Accordingly, the decision of the Taxing Master delivered on 9.12.16 is upheld and this reference is found to have no merit and it is dismissed with costs to the respondent.

DATED AND DELIVERED ON THIS 17th DAY OF May 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicants - N/A

Respondent - N/A