



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
**ELC. MISC. CASE NO. 481 OF 2013**

**PAUL OTIENO MUNGLA**

**T/A PAUL MUNGLA & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**GEORGE OGALO ONER.....1<sup>ST</sup> RESPONDENT**

**GEONER SYSTEMS LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

Coming up before me for determination is the Chambers Summons dated 7<sup>th</sup> February 2014 in which the Applicant, Paul Otieno Mungla trading as Paul Mungla & Co. Advocates, seeks for orders that this Honourable Court do set aside and/or review the determination by the Hon. Deputy Registrar dated 27<sup>th</sup> November 2013 on item No. 1 of the Bill of Costs dated 2<sup>nd</sup> May 2013 and either tax or refer the said item No. 1 of the Bill of Costs herein for taxation with appropriate direction to the Hon. Deputy Registrar to consider the various conveyances exhibited in volume 1, 2, 3 and 4 of the Bills of Costs.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Applicant, Paul Otieno Mungla, sworn on 7<sup>th</sup> February 2014 in which he averred that only item no. 1 of the Bill of Costs herein was contested. He further stated that even though the Hon. Deputy Registrar correctly stated the charging schedule and paragraph in the Advocates Remuneration Order, he nevertheless exercised his discretion injudiciously when setting the instruction fees on the following grounds:

- i. He failed to consider the contractual value of the plots as contained in the conveyances.
- ii. He failed to appreciate sufficiently or at all the Applicant's submissions on record.
- iii. He failed to consider the complexity of this matter and professional time expended by the Applicant on this matter.
- iv. He did not lay a firm basis for basis assessment of instruction fees at Kshs. 600,000/-.

v. He exercised his discretion injudiciously and thereby arrived at a wrong and on inordinately low figure on instruction fees.

The Application is unopposed.

The issue that I am called upon to determine is whether or not to set aside or review the determination of the Hon. Deputy Registrar Evans Makori contained in his Ruling delivered on 27<sup>th</sup> November 2013 in regard to his finding on the instruction fees that the Applicant is entitled to. The bone of contention on the part of the Applicant is that the instruction fees arrived at by the said Hon. Deputy Registrar was too low owing to the failure to use the value of the suit plots the subject matter **ELC No. 7 of 2012**. In arriving at the instruction fees of Kshs. 600,000/-, the said Deputy Registrar had this to say:

**“From the pleadings which I have the value of the 50 acre land or the plots subdivided is not clear. The applicant talks of a conservative figure of Kshs. 600,000/-. There is no valuation report to verify the plots or the 50 acre land could fetch what the applicants contend. From the Plaint also, the issue which was at hand was that the court was being asked to injunct the defendants from selling and alienating land reference no. 7107/2 and the submissions emanating therefrom, defendants to be compelled by the court to surrender all deed plans in their possession and also the court to declare that any conveyances that could have been fraudulently initiated by the defendants be declared null and void. Therefore from the foregoing it is difficult to deduce the value of the subject matter in issue. Thus in assessing the instruction fees entitled to the applicants the taxing master will be guided by Schedule VI(1) (L) “to sue or defend in any case not provided for above, such sum as may be reconciled but not less than Kshs. 8,400/-.” I have looked at the parent file in this matter, I have also considered the land involved which had been subdivided into plots with several bulky conveyancing documents I will award Kshs. 600,000/- as instruction fees.”**

I respectfully disagree that there was nothing that the Hon. Deputy Registrar could rely on to come up with an estimation of the value of the subject matter of **ELC No. 7 of 2012**. The Applicant has attached various conveyances of the plots the subject matter of the said suit whose value was also assessed by officials from the Ministry of Lands. That value is a good indicator of the value of the plots and it would have been possible for the Hon. Deputy Registrar to use that value in assessing the correct instruction fees that the Applicant should be awarded. I accordingly disagree with the award of Kshs. 600,000/- as the instruction fees which I hereby set aside. I refer this file back to the Deputy Registrar ELC with instructions to consider the various conveyances exhibited in volume 1, 2, 3 and 4 of the Bills of Costs and reassess the appropriate instruction fees that should be awarded to the Applicant.

This Application is therefore allowed as noted above. Costs are awarded to the Applicant.

It is so ordered.

**DELIVERED AND DATED AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY 2016.**

**MARY M. GITUMBI**

**JUDGE**