



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 173 OF 2014. (FORMERLY HCC. NO.27 OF 2012.)

MARGARET AUMA OMOTTO.....PLAINTIFF

VERSUS

MARIA WERE ODUORDEFENDANT

R U L I N G.

MARGARET AUMA OMOTTO, who is the judgment debtor and hereinafter referred to as the Applicant, moved this court through chamber summons dated 20th November, 2014 under Rule 11 (2) of the Advocates (Remuneration) Order objecting to the Deputy Registrar's taxation on items 1 and 3, 7 to 13 and 18 to 19 of the party to party bill of costs dated 11th December, 2013. The Applicant relied on four grounds set out on the application and her supporting affidavit sworn on 20th November, 2014. The Applicant then filed written submissions dated 14th January, 2015.

Maria Were Oduori, the judgment creditor and hereinafter referred to as the Respondent, through M/S. Wanyama & company Advocates, filed their written submissions dated 28th January, 2015. When the matter came up for hearing on the 29th January, 2015, the Applicant and counsel for the Respondent adopted their filed written submissions and the court fixed it for ruling today.

I have carefully considered the grounds on the application and submissions filed and find as follows;

1. That this suit was commenced by the Applicant through the Originating Summons dated 25th April, 2012 seeking to among others be registered as proprietor of Marachi/Kingandole/16 through prescription. The suit was opposed by the Respondent through her replying affidavit sworn on 19th September, 2012. The Plaintiff testified as PW 1 and called two witnesses who testified as PW 2 and PW 3. The Defendant testified as DW 1 and called one witness who testified as DW 2.
2. That even though the pleadings filed herein by the parties did not disclose the pecuniary value of the suit land, it is important to note that the copy of the register gave its acreage as 8.5 hectares. The Respondent, at item 1 of the bill of costs prayed for Kshs.49,000/= which was allowed by the Deputy Registrar as drawn. The Applicant submits that the proper provision to apply was Rule 1 (iii) (L) of schedule 4 of the Remuneration Order which provides for K.shs.8,400/=. The parties however agree that the Deputy Registrar had the discretion in this case as the value of the land was not ascertainable. I am of the view that the value of the 8.5 hectares land cannot be below Kshs.500,000/= and considering the fact that oral evidence was taken and lengthy submission filed, K.sh.49,000/= as instruction fee was reasonable. I see no reason to interfere with the Deputy Registrar's decision on item 1.
3. That in view of the fact that the bill of costs was being taxed in accordance with the Advocates

(Remunerations) Order, 2009 as this suit was filed in 2012, I find no grounds to interfere the Deputy Registrar's discretion on items 2, 3, 8, and 9. However item 7 should have attracted Kshs.735/= for the first four folios and Kshs.105 /= for each of the additional two folios bringing the total for the item to Kshs.845/= instead of Kshs.1,000/=. It is therefore reduced accordingly.

4. That the provision of Rule 77 (1) of the Advocates Remuneration Order permits the disallowing of the taxation costs where more than one sixth of total amount of the bill of costs, exclusive of court fees is taxed off. The total bill of costs is indicated as Kshs.92,625/= out of which Kshs.3,750/= is court fees. The amount taxed off is above Kshs.28,000/= which is obviously over one sixth (1/6) of the bill of costs. It follows therefore that the taxation costs being items 14 and 19 should not have been allowed and the Deputy Registrar erred in failing to exercise her discretion in favour of disallowing items 14, 15, 16, 18 and 19.

5. That the Respondent never moved the court to challenge the decision of the Deputy Registrar in disallowing item 2 and their request through the submission is to say the least belatedly and cannot be allowed.

6. That the upshot of the foregoing is that the Deputy Registrar's decision on party to party bill of costs of 28th May, 2014 is confirmed subject to the following:

- a. That item 7 is reduced from Kshs.1,000/= to Kshs.845/=.
- b. That items 14 to 19 are disallowed as they relate to taxation costs and more than one sixth of the total bill of costs has been taxed off.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 04th DAY OF MARCH, 2015.

IN THE PRESENCE OF; PRESENTPLAINTIFF/APPLICANT

ABSENT DEFENDANT/RESPONDENT

N/A.....ADVOCATE.