



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION 96 OF 2010

**IN THE MATTER OF THE ADVOCATES ACT AND IN THE MATTER OF THE ADVOCATES
REMUNERATION ORDER**

**NON CONTENTIOUS MATTER RELATING TO PLOTS KWALE/DIANI/1640 TO KWALE
/DIANI/1649 AND KWALE/SHIMONI/72**

AND

IN THE MATTER OF TAXATION OF ADVOCATE-CLIENT BILL OF COSTS

MUGAMBI & CO. ADVOCATES.....APPLICANT

VERSUS

ERASTUS MUTHURI KARAGANIA.....RESPONDENT

RULING

Before me is an Advocate-Client Bill of Costs dated 11th March 2010. Mugambi & Co. Advocates is the Applicant and Erastus Muthuri Karaganian is the Respondent.

The Applicant is seeking costs for transfers of 11 plots as detailed in item 1. At the hearing of this taxation, the parties testified as follows. The Respondent admitted that he instructed the Applicant to act for him in the transfers of the 11 plots that belonged to his late brother and late sister-in-law being the holder of the Power of Attorney. In consideration for the transfers, the Respondent states that gave the Applicant 1 plot Kwale/Diani 1640 for the good services rendered for which he signed the transfer to one Christine Mugure, on the instructions of the Applicant. That they did not agree on the legal fees and that the plots were not Kshs. 3,000,000/- as claimed by the Applicant, but they could have cost between Kshs. 650,000/- to 1,000,000/- when being sold to a local, and Kshs. 5,000,000/- when sold to a foreigner.

The Applicant, on the other hand states that he was given instructions to transfer the plots, He did so. He stated that the Plots' value was Kshs. 3,000,000/- each and that the work was complex because the same involved a power of attorney who was since deceased.

Parties submitted and I have considered their submissions. The Applicant submitted that his bill should be taxed under Schedule I and Schedule V, I do not agree with him, as when a party is filing a bill of costs he should categorically state which schedule the same should be taxed and should not shift from schedule to another. Considering that this was a transaction over transfers of plots, I am guided by Schedule 1 of the Advocates Remuneration Order, 2006. For the Applicant to succeed in his claim of the instruction fees, he

must show the value of the plots he transferred. In this case he has not done so, and therefore unable to justify the fees claimed of Kshs. 2,500,000/- I thereof tax off the said sum of Kshs. 2.5M stated in item 1. Item 2 – 7, 9 - 13 are not provided for under scheduled 1 as they are all taken up as part of schedule I as they are all taken up as part of the instruction fees. On Item 8, this was a totally different Item from the bill of costs and relates to a gift given to the Applicant for good services, and the same is taxed off. The entire bill of costs dated 11th March 2010 is dismissed with costs to the Respondents.

I apologize for the delay in delivering this ruling.

Dated and signed this 13th day of **July** 2012.

R. OUGO

JUDGE

Delivered in Chambers this 13th day of **July** 2012.

GICHOHI SPDR

In the presence of:-

.....For the Applicant

.....For the Respondent

.....Court Clerk