



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION 95 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 Karagania is the Respondent. In item 1, the Applicant details his work as follows: *Taking instructions to re-establish the boundaries of ten plots KWALE/DIANI/1640 to KWALE/DIANI/1649, traveling to Mombasa/Kwale to the site with the surveyor when we were chased away by the neighbours. Reporting the matter to Diani Police Station on 1/4/2009. Preparing Police Statement by Karagania many meetings with the Police, Land Registrar, District Officer. Several meetings with the local chief and the neighbours to resolve the issue of the beacon. Declaring a boundary dispute with the Land Registrar, Surveyor and neighbor. Meeting postponed several times because of the hostility of the neighbours. Having several meetings with the neighbours and hiring motor vehicle to travel to Kwale. The value of the ten plots KWALE/DIANI/1640 to 1649 estimated at Kshs. 30,000,000/- Many meetings with Erastus Muthuri Karagania in his office etc.*

During the hearing of this taxation, both the Applicant and the Respondent testified. In brief, the applicant testified that he was told to go and re-establish the boundaries, travel with a surveyor on various occasions held over the boundary disputes. In his evidence he have evidence is his travel and accommodation costs. He admitted that he holds Kshs. 650,000/- monies paid to him for various transactions he undertook for Respondents which relates to other matters not related to the subject of this Bill. The Respondent testified that he did not instruct the Applicant, but that the Applicant attended the meetings with the surveyor as a friend. Applicant admits that all air tickets were paid by the Respondent.

The Respondent testified that he was summoned by the Land Registrar over the boundary disputes of his

plots in Kwale/Diani area. Since he was unwell, Mr. Mugambi offered to attend the meeting on his behalf, as a friend. He therefore attended the meetings as his friend and not in his position as an Advocate. The Respondent testified further that he facilitated for his travel, stay and taxi services in Mombasa. That the Applicant is holding his monies for plots that were sold which he has not accounted for. He also stated that he gave Mugambi a plot Kwale/Diani 1640, which the Applicant instructed him to transfer the same to a third party, and he did so.

I have considered the submissions filed by both parties. The issue is whether the Applicant is entitled to the fees claimed. I agree with the respondent's counsel's submissions on the un-procedural way that the Applicant has drawn his bill of costs. In light of the provisions of Article 159 (2) (d) of the Constitution, I will proceed to tax the bill. From the evidence before me, it is clear that the Respondent paid all the travel and accommodation expenses, therefore Items 2 – 14 are taxed off. I remain with Item 1. The Applicant is not a surveyor, and therefore he could not be instructed to go to re-establish boundaries of the plots. It is apparent that he attended meetings on behalf of the Respondent as a friend, and was rewarded with a plot. I also find that the Applicant has failed to adduce evidence that he is entitled to the sum of Kshs. 3Million as instructions fees. It is apparent that he is holding Kshs. 650,000/- received by him for transactions he did for the Respondent.

I find that the Applicant has failed to establish the items claimed in this Bill of Costs dated 11th of March 2010, and I dismiss it with costs to the Respondent.

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