



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION 1274 OF 2015

IN THE MATTER OF THE COMPULSARY ACQUISITION OF LR NO.209/11462

AND

IN THE MATTER OF ARTICLES 40(3) (b), 67 OF THE CONSTITUTION OF KENYA

BETWEEN

FISH PROCESSOR (TWO THOUSAND) LIMITED.....APPLICANT

=VERSUS=

NATIONAL LAND COMMISSION.....RESPONDENT

RULING

1. This is the Chamber Summons dated 24th November 2017 brought under Rules 11 (2) of the Advocates Remuneration Order 2014 and all the enabling provisions of the law.

2. It seeks order:-

(1) That this Honourable Court be pleased to review and/or set aside the ruling on the Taxation by the Deputy Registrar Hon. I. N. Barasa delivered on 2nd November 2017 in respect to item 1, 28, 29, 32, 37, 45, 48 and 50.

(2) That costs of this Application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 4.

4. The application is supported by the affidavit of Paul M. Mwangi Advocate for the petitioner sworn on the 24th November 2017.

5. The application is opposed. There is a replying affidavit sworn by Brian Ikol Advocate and deputy director, Legal Affairs and Enforcement, with the Respondent.

6. I have considered the Chamber Summons, the affidavit in support. I have also considered the replying affidavit and the relevant provisions of the law. The issue for determination is whether the Ruling of I N Barasa Deputy Registrar, delivered on 2nd November 2017 ought to be set aside and/or reviewed.

7. I have gone through the court record, the petition dated 10th December 2015 and filed in court on 11th December 2015 sought among other orders a declaration that the petitioner's right to prompt payment in full of compensation had been infringed. He also sought an order of mandamus to issue to the Chairman of the National Land Commission to release all sums due to the petitioner.

8. On the 4th May 2016, the court directed that the petition be canvassed by way of written submissions. The same were highlighted on 24th October 2016. Judgment was delivered on 1st September 2017. I have gone through the court record and find that there were no complex issues raised in this petition. Schedule VI, A 1(j) (iv) of the Advocates Remuneration Order Provides that:-

“To present or oppose a constitutional petition and prerogative orders such fees as the taxing master in their discretion where the matter is opposed and found to satisfy the conditions set out, such sum as may be reasonable but not less than Kshs.100,000”.

I find that the taxing master awarded Kshs 250,000 under Item 1 which I find to be fair and reasonable. The taxing master did not err in awarding this amount which I consider to be reasonable. In the case of **First American Bank of Kenya vs Shah & Others (2002) EA 64 at page 69** the court held that:-

“First, I find that on the authorities, this court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on error of principle or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle.....”

9. I find no reason to interfere with the taxing master’s award on this item.

10. I also do not fault the taxing master’s decision in disallowing item 32. The taxing master rightly disallowed getting up fees. This matter proceeded by way of written submissions. The same was not set down for hearing hence the advocate did need to prepare for it. I see no reason to interfere with the taxing master’s decision. I also do not fault the taxing master’s decision on Item 28, 29, 37, 45, 48 and 50 on the lower scale as this was not a complex issue. The same were reasonably taxed as per the Advocates Remuneration Order. There is no justification that the taxing master ought to have allowed the items in a higher scale.

11. The Judgment by Lady Justice Gitumbi dated 1st September 2017 is clear that the petitioner was to get costs of the petition. There is not mention of interest. Nothing could have been easier than for the Honourable Judge to state that the petitioner was entitled to interest. It should be noted that this is not just any claim for money. It was a petition to compel the respondent to release the sums which had already been awarded. In his affidavit Brian Ikol the deputy director Legal Affairs and Enforcement with the Respondent confirms that the said amounts were paid to the petitioner way before the Judgement was delivered. This averment has not been rebutted.

12. From the forgoing, I find no justifiable reasons to interfere with the ruling of the Deputy Registrar dated 2nd November 2017. The upshot of the matter is that, this Chamber Summons is not merited and the same is dismissed. Each party to bear his/its own costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 12TH day of FEBRUARY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for Applicant

.....Advocate for the Respondent

.....Court Assistant