



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'Á

MISC. APPLICATION NUMBER 30 OF 2017

(FORMERLY MISC NO 24 OF 2016 -KERUGOYA)

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER

BETWEEN

JAMES MUTHIGA ALBERT.....JUDGEMENT DEBTOR/APPLICANT

AND

DAVID MWANIKI CHEGE

CHARLES MAINA CHEGE.....DECREE HOLDERS/RESPONDENTS

AND

IN THE MATTER OF ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC SUIT NO. 19 OF 2014.

RULING

1. On 23rd August 2016 the Taxing Master taxed a Bill of Costs filed by the Decree Holders/Respondents on account of costs awarded in the Kerugoya Environment and Land Court Civil Appeal Number 19 of 2014 against the Judgment Debtor/Applicant. Dissatisfied by the decision of the Taxing Master on account of Instructions Fees being item one (1) in the Bill of Costs allowed at Kshs. 75,000.00, the Judgment Debtor/Applicant by a Summons in Chambers under Paragraph 11(2) of the Advocates (Remuneration) Order filed in court on 25th October 2016 applied to this court for orders that the Ruling dated 23rd August 2016 as relates to Item One (1) of the Bill of Costs dated 20th June 2016 by the Taxing Officer be set aside. The Application is supported by an Affidavit sworn by the Judgement Debtor/Applicant on 25th October 2016.
2. The Judgement Debtor/Applicant has set out four (4) ground grounds to upset the Ruling of the Taxing Officer. These may be summarized as to whether the Taxing Officer misapplied the provisions of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014.
3. The Decree Holders/Respondents have opposed the Application and filed an Affidavit in Reply sworn by the First Decree Holder namely, David Mwaniki Chege and filed in court on 25th November 2016.
4. The parties canvassed the application by Written Submissions. These were filed in court on 2nd June 2017 and 9th June 2017 by the Judgement Debtor/Applicant and Decree Holders/Respondents through their Advocates respectively. I have read the entire record of the court file transferred from the Kerugoya Environment and Land Court to this court together with the application under consideration, the affidavits relating to the Application inclusive of the annexures and the submissions referred to above and considered the same.
5. The parties did not file any issues for determination. The court has found only two (2) issues for determination namely: - whether the Taxing Officer misapplied the provisions of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014; and if so, what is the correct remuneration on account of the Instructions Fees under Item One (1) of the Bill of Costs filed by the Decree Holders/Respondents and the costs of the Application.
6. It is common ground that:-

(a) ELC No. 19 of 2014 between the parties herein was dismissed by the Court and costs thereof awarded to the Decree Holders/Respondents;

(b) the claim of the parties in Kerugoya ELC Appeal no. 19 of 2014 is not liquidated. The value of the subject matter cannot be determined from the pleadings, judgment or settlement between the parties; and

(c) the remuneration payable is that prescribed under Rule 1 of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014.

7. Except where the taxing officer in his discretion shall increase or (unless otherwise provided) reduce it, the fees remunerated for proceedings undertaken between parties in the High Court is set out under distinct headings beneath Rule 1 of Schedule 6 of the Advocates (Remuneration)(Amendment) Order, 2014. These are numbered (a) to (j) with sufficient particulars given as to how the fees is calculated and arrived at.

8. The claim of the parties in Kerugoya ELC Appeal No. 19 of 2014 is not liquidated, value of the subject matter cannot be determined from the pleadings, judgment or settlement between the parties. It is clear, therefore, that the appropriate remuneration cannot be assessed by application under items (a) or (b) in beneath Rule 1 of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014.

9. The Taxing Officer appears to have applied remuneration under item (j) under the sub-heading "Other Matters" below the major heading of fees chargeable in **Constitutional petitions and prerogative orders** and awarded Kshs. 75,000.00 complained by the Judgment Debtor/Applicant. In this court's view, the sub-heading "Other Matters" would not properly apply in matters relating to Appeals which is separately. I find that the Taxing Officer fell in error in that regard.

10. The manner of considering and deciding remuneration prescribed for Appeals is stated in item (j) under the sub-heading "Appeals" below the major heading of fees chargeable in **Constitutional petitions and prerogative orders**. The relevant part reads "To present or oppose an appeal in any case not provided for above; such sum as may be reasonable but not less than Kshs 25,200.00". The sum stated in the preceding sentence is the bare minimum. Taking all the matters into account, I will award Kshs. 33,750.00.

11. The costs shall follow the event.

12. In the upshot, I allow the appeal and make the following orders:-

(a) The sum of Kshs. 75,000.00 awarded by the Taxing Officer is hereby set aside and substituted therefore with Kshs. 33,750.00.

(b) The costs of this application assessed at Kshs. 5000.00 shall be paid by the Decree Holders/Respondents jointly and severally to the Judgment Debtor/Applicant.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 8TH DAY OF FEBRUARY, 2018.

J.G. KEMEI

JUDGE