



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

THIKA LAW COURTS

ELC MISC.CIVIL APPLICATION NO.19 OF 2017

NGURE MBUGUA & CO. ADVOCATES.....APPLICANT/ADVOCATE

-VERSUS-

JOSEPH MBURU MUIGAI.....RESPONDENT/CLIENT

RULING

Coming up for determination is the Applicant's **Chamber Summons** dated **19th September 2017**, brought under Paragraph 11(2) of the Advocates Remuneration Order L.N. 35 of 2014, wherein the Applicant has sought for the following orders:-

- 1) That the Ruling and Order on Taxation by the Learned Deputy Registrar of this Honourable Court taxing the Applicants Advocate/Client Bill of Costs at Kshs.89,230/= inclusive of Value Added Tax be set aside in its entirety.**
- 2) That an award of costs as claimed in the Applicant's original Bill of Costs or such other reasonable award in consonance with the provision of the Advocate Remuneration Order be made.**
- 3) That such other or further order as may just be made.**

The application is premised on the following grounds:-

- a) The Learned Deputy Registrar as Taxing Officer of this Honourable Court erred in finding and holding that the Sale Agreement forming the subject matter of the transaction did not disclose a purchase price and hence she erroneously awarded the minimum scale fee (Kshs.35,000/-) pursuant to Schedule 1(1) of the Advocates Remuneration Order and hence taxed off the amount of Kshs.465,000/= whereas it was evident from the agreement for sale which was before the Taxing Officer that Clause 3.1 of the agreement for sale designated a consideration or purchase price of Kshs.25,000,000/= and thereby the scale fee on an Advocate/Client basis would be Kshs.500,000/= and hence the amount claimed in the Bill of Costs was reasonable and should have been taxed as drawn.**
- b) The Learned Deputy Registrar as Taxing Officer of this Honourable Court further erred in failing to appreciate that the Applicant's Bill of Costs was not contested by the Client and hence should have been taxed as drawn.**

It is also supported by the **affidavit** of **John Ngure Mbugua**, Advocate of the High Court of Kenya who averred that he lodged an Advocate/Client Bill of Costs on **23rd March 2017**, which related to instructions received from the Respondent/Client involving the sale and purchase of a parcel of land known as **No.Ruiru/Ruiru East Block 7/102**, as per the annexed Sale Agreement. He further averred that his Law Firm acted for both parties in the transaction. It was his further averments that the purchase price was **Kshs.25,000,000/=** and therefore the instruction fees on the transaction was **Kshs.500,000/=** computed according to Schedule 1(1) of the **Advocates Remuneration Order 2014**.

He further contended that despite the sale agreement being before the Learned Deputy Registrar, she erroneously found and held that the sale agreement annexed to the Bill of Costs did not disclose the purchase price of the said land. Therefore the said Deputy Registrar taxed off **Kshs.465,000/=** on **Item No.2** to leave a sum of **Kshs.35,000/=**, the minimum scale fees. It further averred that the Learned Deputy Registrar further acted in error and misconstrued the purport of **Clause No.8.2** of the Sale Agreement and therefore taxed off **Item No.3** in its entirety.

Further, it was contended that though the Sale Agreement did indicate that the purchaser was to bear stamp duty and other statutory charges, the said charges were in fact paid by his Firm on their behalf to enable the title deed be processed and issued and hence the amount charged on **Item No.3** of the Bill of Costs in the amount of **Kshs.502,000/=** which is **2%** of the purchase price was payable to him. He alleged that the Bill of Costs was indeed drawn to scale and the Taxing Officer made elementary errors in principle and awarded a manifestly inadequate

fee to his Firm and other order on taxation and the same should be set aside.

This application was served upon the Respondent on **20th September 2017**, as per the **Affidavit of Service** of **Ancent Ndambuki**, the **Process Server**. However the said Respondent did not file any response to the said application.

The Court directed the Applicant to canvass the same by way of written submissions which submissions were filed in court on **21st November 2017**. Again the Respondent was served with the said written submissions and the mention Notice on **21st November 2017** as per the **Affidavit of Service** sworn again by the same **Ancent Ndambuki** but he failed to attend court.

The Court has now carefully considered the instant **Chamber Summons** dated **19th September 2017** and the annexures thereto. The Court has also considered the written submissions and the relevant Sections of the **Advocates Remuneration Order 2014**, and it makes the following findings:-

There is no doubt that the Applicant herein filed its **Advocate/Client Bill of Costs** on **23rd March 2017** and the amount claimed was Kshs.1,278,668/=. It is also evident that the Respondent/Client did not turn up in court and the Deputy Registrar (taxing master) proceeded to tax the said Bill. In her Ruling, the taxing master stated that since the instructions were given on **24th May 2015**, the **Advocates Remuneration Order of 2014**, was applicable in the said taxation specifically **Schedule 1**.

It is evident that in her Ruling and Reasons, the taxing master taxed off **Kshs.465,000/=** from **Item No.2** wherein the Applicant had sought for **Kshs.500,000/=**. The taxing master alleged that the Sale Agreement did not disclose the purchase price of the land and therefore she could not determine the value of the subject matter. The taxing master proceeded to use the minimum scale and taxed **Item No.2** to the tune of **Kshs.35,000/=**. Indeed the Court has considered the said Sale Agreement in issue and has noted that no purchase price was indicated. The sale agreement attached to the Advocate/Client Bill of Costs did not have Page 2 and therefore no purchase price was shown. However, the sale agreement attached to the instant Chamber Summons has Page 2 and **in Clause No.3.1**, it is indicated that the purchase price was **Kshs.25,000,000/=** and on **3.2** the Vendor had acknowledged receipt of **Kshs.7,000,000/=**. Therefore the taxing master was correct when she stated that the purchase price of the subject property had not been indicated. Since there is another sale agreement which has all the pages and the purchase price is given, then it is apparent that there was an error on the part of the Applicant when it filed an incomplete document. The taxing master proceeded to tax the said Bill of Costs basing **Item No.2** on a sale agreement that had no purchase price indicated. That was indeed an error.

It is trite that the taxing officer has a complete discretion which discretion should be exercised judicially and one has to apply correct principles. Further it is also trite that court can only interfere with taxation where there is an error of principles or where the taxing officer may have considered irrelevant matters.

It is apparent that in this matter, there was an error of principle in that the attached sale agreement that the taxing master relied on to tax **Item No.2** did not have the purchase price as **Page 2** of the same **was missing**. Had all the pages been attached, maybe the taxing master would have considered the purchase price while taxing the said **Item No.2** and maybe would have arrived at a different figure. See the case of **Trade Bank Ltd (in liquidation)...Vs...L2 Engineering Constructions Ltd & Another, Civil Appl. No.117 of 2000**, where the Court held that:-

“The taxing master has to be guided by the value of the subject matter in dispute in assessing instructions fees.... and the taxing master is obliged to determine the value of the subject matter from the pleadings, Judgements or settlement between the parties”.

In this case, the value of the subject matter was given in the sale agreement.

Further, in the case of **Wonga & Co. Advocates...Vs...Busia Sugar Co. Ltd, Busia HCC Misc.Appl No.118 of 2007**, the Court held that:-

“It should be understood that the High Court can only interfere with the taxing officer’s decision on taxation if it is shown that an error of principle has been committed or that the award is manifestly excessive or inordinately low in the circumstances of each case”.

The Applicant also submitted that the taxing matter misconstrued **Clause No.8.2** of the Sale Agreement and taxed off **Item No.3**. However, the Court has seen the reasons given by the taxing officer that **Clause 8.2** of the Sale agreement indicated that the purchaser was to bear charges, with respect to the transfer of the property. Though the Appellant alleged that his Law Firm paid those charges, no evidence was annexed to support that allegation. This Court will not fault the taxing master decision in taxing off **Items No.3** and **No.4**.

For the above reasons, the Court finds that there was an error in principle as the page indicating the purchase price of the property was missing from the sale agreement that the taxing master considered in taxing **Item No.2**. The Court finds that the Applicant’s applicant will only succeed in respect of **Item No.2**.

Consequently, the **Court proceeds to set aside the taxed amount** in **Item No.2** and remits the matter back to the Deputy Registrar (taxing master) for **fresh taxation** using the sale agreement that is attached to this application and which has **Page 2** with the purchase price or value of the subject property indicated thereon.

This application succeeds partially and only **Item No.2 is to be considered in the fresh taxation**.

It is so ordered.

Dated, Signed and Delivered at Thika this 16th day of March 2018.

L. GACHERU

JUDGE

In the presence of

No appearance for Applicant/Advocate though aware of the Ruling date.

No appearance for Respondent/Client

Lucy - Court clerk.

Court – Ruling read in open court in the absence of the parties.

L. GACHERU

JUDGE

16/3/2018