



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

MISC. APPLICATION NO 4 OF 2016

(Formerly NYERI HCC MISC.APPL. 54 OF 2015)

JAMES MUHAMI WANAIKUA.....1ST APPLICANT/RESPONDENT

AARON MWANGI MUTHAMI.....2ND APPLICANT/RESPONDENT

SAMUEL NJOGU MUHAMI.....3RD APPLICANT/RESPONDENT

NANCY WAMUYU MUHAMI4TH APPLICANT/RESPONDENT

JOYCE WAMAITHA MUHAMI.....5TH APPLICANT/RESPONDENT

VERSUS

JULIUS MACHIRA MWANG.....1ST RESPONDENT

JAMES GITHAINGA HARUN.....2ND RESPONDENT

RULING

1. This ruling is in respect of the chamber summons application dated **16th October, 2017** brought under **Rule 11 (1) and (2)** of the Advocates (Remuneration) Order.

2. The application seeks to set aside the order of the taxing master and item 1 be taxed afresh in respect of the applicants' bill of costs dated **25th June, 2017** on the grounds that item 1 of the bill was taxed so manifestly low as to amount to an error or misdirection.

3. The application is supported by the affidavit of the applicants' advocate, **H.S Mshila** in which it is pointed out that item 1 in the bill was taxed at Kshs. 5000/- which is grossly low. It is contended that the taxation master failed to take into account the tedious and lengthy research undertaken by the applicant's advocate due to the complexity of the matter, the difficulty and novelty of the questions raised in the application.

4. The respondent did not file oppose the application by filing any document.

5. When the application came up for hearing, counsel for the applicant urged this court to interfere with the taxation of item 1 and grant them a higher amount than 5000 as instruction fees.

Analysis and determination

6. The bill of costs which forms the subject matter of the application herein arises from the decision of this court made in the miscellaneous application, dismissing the respondent's application herein.

7. It is noteworthy that the application relates to a stay of execution and admission of an intended appeal out of time so that no monetary value can be assigned to the subject matter of the application.

8. The application was heard orally. The respondent opposed the application and relied on one authority.

9. There is nothing in the documents relied on by the respondent that can warrant a finding that the issues raised in the application were complex.

10. On the contention that item 1 (taking instructions to defend the respondent in the matter being application for leave to appeal out of time and stay orders), was undertaxed, having consulted the order on that issue, I note that the amount awarded was in accordance with the law (the lower scale). The Kshs.75,000/= quoted by the applicants is in respect of the higher scale. The applicant did not justify why the higher scale and not the lower scale was the one applicable in the circumstances of his case. The applicants' through their advocate, filed a bill of costs for taxation before the taxing master of this court. The bill was for **Kshs. 114,215.00** and was taxed at **Kshs. 24,415/= Kshs.5 ,000/=** was awarded in respect of instruction fees which is the disputed amount.

11. I have considered the repying affidavit filed by the applicant and the annexures thereto. Although the taxing master did not err in awarding kshs 5, 000 (lower scale) for taking instructions as provided for in Schedule 6 of the Advocates remuneration order, taking into consideration the issues raised in the replying affidavit and the annexures thereto, I am satisfied that the amount awarded for taking instructions was on the lower side.

12. Consequently, I set aside the figure of **Kshs.5000/=** for taking instructions and substitute it with **Kshs.10000/-**

Orders accordingly.

Dated, Signed and Delivered in open court at Nyeri this 20th day of June, 2018.

L N WAITHAKA

JUDGE

Coram:

N/a for the defendant/respondent

Ms Wangare h/b for Mr. Ombongi for plaintiff/applicant

Court assistant - Esther