



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 1519 OF 2001**

**MAINA MURAGE & COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**MAE PROPERTIES LIMITED.....RESPONDENT**

**RULING**

The Advocate filed a bill of costs on 20/12/2001 against his client to recover fees relating to a sale transaction over a property in Runda, Nairobi. Parties agreed to refer the matter to the High Court pursuant to paragraph 12 of the Advocates Remuneration Order. The High Court gave its ruling on the issue of instructions given to the advocate. Being dissatisfied with the decision of the High Court, both parties went to the Court of Appeal. The Court of Appeal delivered its judgement whose finding was that the Advocate had instructions to draw the two sale agreements, the charge and debenture and was entitled to charge the items relating to these. The court directed that the bill would be taxed accordingly.

Both parties agreed on 28/6/2018 that this court should tax the bill.

I have perused the bill of costs dated 20<sup>th</sup> December 2001. I have also perused the submissions filed by the parties as well as the court record. The Court of Appeal held that the Applicant prepared the two agreements for sale, the charge as well as the debenture. The property that was the subject of this dispute is L.R. No. 7785/10. The record reveals that although the Applicant prepared the following documents, that is, the sale agreement for the sum of Kshs. 208,000,000/-, the undated transfer over the property, the charge for Kshs. 265,312,250/-, debenture for Kshs.. 265,321,250/- and the agreement for sale for the sum of Kshs.. 104,000,000/-, neither Mae Properties Limited nor Vigasio Limited, the parties to the transaction executed these documents.

Both the Applicant and the Respondent are in agreement that the bill of costs ought to be taxed pursuant to the Advocates (Remuneration) (Amendment) Order. The Applicant submits that the bill of costs should be taxed pursuant to schedule 1 as these were conveyancing transactions. The Applicant submits that in the alternative, if the court finds that schedule V is applicable, it should still appreciate that the work was completed in substance and award the scale fee or reduce the scale fee by 10%. The Respondent has submitted that the work was not completed and therefore, the applicable schedule is V.

Rule 20 of the Advocates Remuneration Order (ARO) provides that scale charges shall include all work ordinarily incidental to a transaction, and in the case of a conveyance, transfer or mortgage; it shall include taking of instructions to prepare the necessary deed or document, investigation of title, report on the title to the client, preparation or approval or adjustment of the deed or document, settlement of the transaction if in the town of the advocates practice, obtaining by correspondence any necessary consent or clearance certificate but excluding land control consent, registration of the deed and correspondence between an advocate and his client.

Rule 18(f) of the ARO provides for uncompleted transactions and other business. The rule states that in the case of uncompleted transactions relating to business of a non-contentious nature, the remuneration is to be that prescribed under schedule V.

In the present case, it is clear from the documents provided in support of the bill of costs that the transaction was not completed. The

Applicant is therefore not entitled to scale fee but fees for the work undertaken on behalf of the Respondent. This fee is to be determined in accordance with schedule V of the Advocates Remuneration Order (ARO), 1997.

The Applicant has charged separate fees for instructions to prepare the agreement for fees and to prepare the charge and debenture over the property. Instruction fee is a static item and is charged once only. (**See the Court of Appeal case of Joreth Limited –v- Kigano & Associates; CA No 66 of 1999**). Consequently, the Applicant cannot charge instruction fees for preparing the agreements for sale, instruction fees to prepare the charge and instruction fees to prepare the debenture. Under schedule, the Applicant can only charge instruction fees once, having regard to the care and labour required the number and length of the papers to be perused, the nature or importance of the matter involved, the interest of the parties, complexity of the matter and all other circumstances of the case as may be fair and reasonable.

I have carefully perused the Applicant's bill of costs, the documents availed in support of the bill, that is the agreements for sale, the charge and debenture documents. I have also carefully considered the submissions filed by the parties. I have taken note of the fact that none of these documents were executed by any of the party to the transaction. I have perused agreements for sale, the charge and debenture documents and noted the structure of the transaction. I have also noted the interest of both the vendor and the purchaser in that transaction, though aborted. I have also considered the proceedings and the length of time it has taken. I am of the considered opinion that in the present case, a sum of KShs. 5,400,000/- will suffice as instruction fees. Item 1 is so taxed. Kshs. 869,800/- is taxed off.

Schedule V provides a fee of Kshs. 120/- per folio for each document drawn. The charge document consists of 19 folios. Item 2 is taxed at Kshs. 2,280/-. Kshs. 3,992,438.75/- is taxed off. The debenture consists of 28 folios. Item 3 is taxed at Kshs. 3,360/-, Kshs. 3,991,358.75/- is taxed off.

The item under disbursement is disallowed for the reason that the Applicant did not provide receipts to prove the said disbursements and the number of folios in the photocopying is not specifically stated.

The bill of costs is taxed as follows:

Total of Part A:       Kshs. 5,405,640/-

Add 16%V.A.T.:       Kshs. 864,902.4/-

**Total:                   Kshs. 6,270,542.40/-.**

The Applicant's bill of costs dated 20<sup>th</sup> December 2001 is taxed at Kshs. 6,270,542.40/-

Dated and delivered at Nairobi this 6<sup>th</sup> day of December 2018.

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. Wathuti holding brief for Mr. Gichuhi for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendant