



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
ELC MISC. CASE NO. 21 OF 2016
IN THE MATTER OF ADVOCATES ACT CAP 16 LAWS OF KENYA
IN THE MATTER OF ADVOCATES REMUNERATION AMENDMENT ORDER, 2014
AND
IN THE MATTER OF ADVOCATE – CLIENT BILL OF COSTS
AND IN THE MATTER OF NON-CONTENTIOUS MATTER.
BETWEEN
KOSKEI MONDA & CO. ADVOCATES.....ADVOCATE/RESPONDENT
=VERSUS=
PARMINDER MANKU.....1ST CLIENT/APPLICANT
BALJINDER KAUR MANKU.....2ND CLIENT/APPLICANT
RULING

1. This is a ruling in respect of a Chamber Summons dated 28th September 2016 brought by the Clients/Applicants seeking the following reliefs:-

- (1) That the Honourable Court be pleased to enlarge time and grant leave to the applicants to file this reference out of time.***
- (2) That the ruling and order of the taxing master dated 23rd June 2016 be set aside.***
- (3) That the bill of costs dated 25th January 2016 be taxed by this Honourable Court.***
- (4) That the costs of this application be provided for.***

2. The applicants contend that when the ruling on taxation was delivered on 23rd June 2016, the taxing master asked their Advocate to come for the typed ruling the following day. The advocates went to the registry on the following day but could not be given the ruling as the court file had not been returned to the registry. The applicants' advocate kept following up the file until they finally obtained the ruling. By

the time the applicants' advocate got the ruling, the time for filing a reference to this court had long passed hence the application for enlargement of time.

3. The applicants further contend that the taxing master failed to apply the correct provisions of the Advocates Remuneration (Amendment) Order of 2014. That the taxing master failed to take into consideration the submissions filed by the applicants.

4. The applicants' application is opposed by the respondent through a replying affidavit sworn on 16th January 2017. The respondent contends that the applicants' application is bad in law and that it is premised on wrong principles. The respondent contends that the taxing master arrived at a correct decision based on facts before her.

5. I have carefully considered the applicants' application as well as the opposition to the same by the respondent. I have also considered the submissions filed by the parties in this matter. There are really two issues which fall for determination. There could have been a third one but it seems that though the issue was raised before the taxing master, the same was not raised under this reference. This is the issue of whether there was retainer. The taxing master addressed it properly and found that there was retainer based on documents availed. This explains why the parties are not raising it here.

6. The first issue for determination is whether time should be enlarged. The second issue is whether the taxing master applied the correct provisions of the Advocates Remuneration (Amendment) Order 2014 in taxing the bill.

7. On the first issue, there should be no problem in enlarging the time. The applicants have explained why they could not file the reference in time. They had to wait for the ruling and they also had to wait for the taxing master to give her reasons. In any case this issue was not seriously contested by the respondent.

8. On the second issue as to whether the taxing master applied the correct provisions of the Advocates Remuneration (Amendment) Order 2014, this court has to consider the nature of the instructions given to the respondent. A look at the pleadings herein show that the applicants had forwarded a tenancy agreement which had already been drafted by a different law firm and they sought for an opinion from the respondent. The respondent later sent an itemised bill to applicants who declined to pay the same prompting the respondent to file an Advocate/Client bill for taxation. It is clear from the submissions before the taxing master that the bill was drawn in accordance with **Schedule 2 Paragraph 1 of the Advocates Remuneration Amendment (Order) 2014.**

9. The schedule under which the bill was brought relates to scale fees of the Advocate preparing, settling and completing documents which fees should be calculated based on the annual rent. In the instant case, the respondent was not asked to prepare a tenancy agreement. The tenancy agreement had already been drawn by a different law firm and the applicants' were only seeking the respondent's opinion on what could be incorporated in the tenancy agreement to protect their interests. It was therefore wrong for the respondent to have brought the bill under this schedule and for the taxing master to tax it under that schedule.

10. The correct provisions which should have been used in assessing the fees is schedule 5 Part II Paragraph 6 which deals with opinions. The respondent rendered a written opinion to one of the applicants. Paragraph 6 provides for a minimum fees of Kshs.35,000/-. In assessing what is payable at such factors as care and labour required should be taken into account. The number and length of the papers to be perused should also be considered. The nature and importance of the matter, the amount and value of the subject matter involved, the interest of the parties, complexity of the matter should also be considered.

11. There is an issue raised in the submissions that the respondent had suggested an amount of Kshs.150,000/-. This may be true but this does not tie down this court to that proposal. The respondent may have been of that view before they decided to file a reference and they are perfectly in order to

change from that view. A reference is just like an appeal and this court is not bound to arrive at the same finding as the lower court. This court is bound to evaluate the evidence and arrive at its own conclusion.

12. Having found that the taxing master used the wrong provisions of the Advocates Remuneration (Amendment) Order 2014, I hereby set aside the taxation dated 23rd June 2016. I will not remit back the bill to be taxed by a different taxing master other than Mwayuli. To save judicial time, I will assess the respondent's bill at Kshs.70,000/-. I have assessed the bill at the above amount because I have considered the fact that the matter herein was not a complex matter. There were only about seventy (70) pages of documents to be perused. The applicants were advised to sign the tenancy agreement the way it was which means there wasn't any serious issue to be taken into account. The monthly rent was Kshs.200,000/-. The applicants shall have the costs of this reference.

It is so ordered.

Dated, signed and delivered at **Nairobi** on this **15th** day of **June** 2017.

E. OBAGA

JUDGE

In the absence of Advocates for the parties who were aware of the date and time of delivery of ruling.

Court Assistant - Hilda