



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.55 OF 2011**

**CAROL SILCOCK.....PLAINTIFF/DECREE HOLDER**

**=VERSUS=**

**KASSIM SHARIF MOHAMED.....DEFENDANT/JUDGMENT DEBTOR**

**R U L I N G**

1. The Chamber Summons before me is the one dated 11<sup>th</sup> December, 2014 and filed by the Plaintiff.
2. In the Application, the Plaintiff is objecting to the decision of the Taxing Master in respect to items number 1, 5, 35 and 36.
3. The Application is premised on the grounds that the Taxing Master exercised her discretion wrongly in taxing instructions fees even below what the Respondent had submitted on; that the Taxing Master failed to appreciate the state and labour expended by counsel for the Decree Holder and that the learned Taxing Master erred in her decision on items 35 and 36 of the Bill of Costs in so far as they relate to court attendance fees.
4. According to the Plaintiff's Affidavit, he spent more than Kshs.200,000 that was awarded by the Taxing Master; that the subject matter is valued at more than Kshs.13,000,000 and that the taxation was not properly done.
5. In his Grounds of Opposition, the Respondent deponed that the Bill of Costs was/is incurably defective for the reason that the firm of M/S Richard O. & Co. Advocates failed to annex thereto a separate Bill of Costs in respect of M/S Mayaka Langat & Co. Advocates who were formerly on record; that the Application should be struck out because it is incompetent and bad in law and that the Applicant failed to lodge a Notice of Objection to the taxation within the period prescribed under the statute.
6. It is the Respondent's case that in any event, the Applicant has failed to demonstrate any "error in principle" committed by the Taxing Officer and that the Taxing Officer exercised her discretion judicially.
7. In the Supplementary Affidavit, the Applicant's advocate annexed the letter dated 14<sup>th</sup> July, 2014 requesting the Taxing Officer to favour him with the reasons for the taxation and more specifically "on the instruction fees."
8. The Applicant's and the Respondent's advocates filed their respective submissions.
9. The Applicant's advocate submitted that for the that Taxing Officer to deny the Applicant instruction fees without taking into account the duration of the proceedings and without considering the fair value of the work and responsibility involved amounts to an injustice.
10. The Respondent's advocate submitted that the firm of Richard O. & Co. Advocates came on record after the firm of Muisyo & Co. Advocates had entered appearance and filed a Defence; that the firm of Richard O. & Co. Advocates was not entitled to instruction fees and that the Taxing Officer exercised her discretion properly.

## **Analysis and findings:**

- 11.The firm of Richard O & Co. Advocates filed the Plaintiff's Party and Party Bill of Costs on 29<sup>th</sup> August, 2013.
- 12.In the said Bill of Costs, the Plaintiff's advocate prayed to be awarded Kshs.1,052,500 for "receiving instructions to file and claim for specific performance of a sale whose subject matter is land portion No. 39 Watamu valued at Kshs.3,500,000/-.
- 13.The taxing master heard the matter and delivered her Ruling on 10<sup>th</sup> September, 2014.
- 14.Although the Respondent's advocate has submitted that the firm of Richard O. & Co. Advocates is not entitled to the instruction fees because the Plaintiff herein was filed by the firm of Mayaka, Langat & Co. advocates, there is no indication before me that the issue of representation of the Plaintiff was raised before the Taxing Officer.
- 15.Indeed, the issue of whether the firm of Richard O. & Co. Advocates was entitled to instruction fees was not addressed at all by the Taxing Officer.
- 16.Having not raised the issue before the Taxing Officer, and considering that the Respondent has not filed a cross reference, I decline to entertain the argument of whether the Applicant's current advocate on record was entitled to the instruction fees that was awarded by the Taxing Officer or not.
- 17.As I have already stated, the Taxing Officer delivered her Ruling on 10<sup>th</sup> September, 2014. The Reference challenging the said decision was not filed until 11<sup>th</sup> December 2014.
- 18.There is no evidence before me to show that the Applicant or his advocate requested for the reasons of the decisions of the Taxing Officer within 14 days pursuant to the provisions of Rule 11(1) of the Advocates (Remuneration) Order.
- 19.The letter that the Applicant has annexed on his Supplementary Affidavit in which his advocate purported to ask for the reasons of the taxation is dated 14<sup>th</sup> July 2014, by which time the Taxing Officer had not even heard the Bill of Costs.
- 20.In the absence of evidence to show that the Applicant requested for the reasons of the decision of the Taxing Officer within 14 days, of the date of the decision, I find and hold that the Application dated 11<sup>th</sup> December, 2014 is incompetent and bad in law.
- 21.Furthermore, the Application was not filed within 14 days from the date of receipt of the reasons pursuant to the provisions of Rule 11(2) of the Advocates (Remuneration) Order.
- 22.For those reasons, I dismiss the Application dated 11<sup>th</sup> December, 2014 with costs.

Dated and delivered in Malindi this **19<sup>th</sup>** day of **February**, 2016.

**O. A. Angote**

**Judge**