

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

MISCELLANEOUS CIVIL APPLICATION NO. 10 OF 2013

SARAH CHELAGAT SAMOEI.....APPLICANT

VERSUS

MUSA KIPKERING KOSGEL.....1ST RESPONDENT

ESTHER SEUREI.....2ND RESPONDENT

RULING

The applicant, *Sarah Chelagat Samoei* has come to this court against *Musa Kipkering Kosgei* and *Esther Seurei* for review of the ruling on taxation herein made on 18.7.2014 by the Deputy Registrar and that the court to proceed to tax the bill under the appropriate provisions of law. The application is based on grounds that the applicant is dissatisfied with the order made on taxation particularly on items 1 and of the Bill of Costs. The applicant contends that the Deputy Registrar proceeded on the wrong premises in treating the application for transfer of suit as a suit and that the Bill of Costs ought to have been taxed on the basis of an application. Therefore no getting up fees was payable in respect of the Bill of Costs.

According to the applicant the amount awarded on Item 1 of the Bill of Costs is highly exaggerated and untenable. The Deputy Registrar did not properly direct her mind on whether the Bill of Costs was in respect of a suit or an application and that the applicant stands to suffer if stay of execution is not granted as the respondents will proceed to execute on the taxed cases.

The application is supported by the affidavit of Sarah Chelagat Samoei who states that on 15.3.2013, she filed the instant application to have Eldoret CMCC No. 201 of 2011 transferred to the Environment and Land Court for hearing and disposal which was dismissed with costs to the respondents. On 11.9.2013, the respondents filed their bill of costs for taxation. The Bill of Costs was subsequent thereto set down for taxation. That upon the Honourable Deputy Registrar hearing the respondent's advocate and her advocate taxed the Bill of costs at Kshs.45,228/= on 18.7.2014. That her advocate wrote a letter seeking reasons for the Taxing master's decision. She attached a copy of the ruling of the Honourable Deputy Registrar . She is dissatisfied with the decisions of the Deputy Registrar and wish to pursue a reference against the same.

The applicant submits that the bill of costs which came up for determination was on an application which was unsuccessfully prosecuted. The Deputy Registrar therefore, ought to have Awarded the respondent costs of the application not the suit. She therefore, proceed on wrong principles. That there was no case to defend and fees for getting up to prosecute an application is not allowable.

The defendant submits that the applicant herein filed Eldoret Chief Magistrate's Court Civil Case No. 10 of 2013 against the respondents who filed a defence in which they contended that the Lower Court did not have jurisdiction to entertain the suit owing to the provisions of Cap. 300 (now repealed) which stated that a claim on land whose value exceeds Kshs.500,000/= shall not be filed in the substitute court and therefore, pleaded that the suit was barred by jurisdiction.

The applicant sought to transfer the suit to the High court to circumvent jurisdiction but the application was dismissed with costs. The applicant argues that the application to transfer was an ordinary application whereas the respondent argues that this was not an ordinary application.

According to the respondent, the taxing Master applied the law properly when he taxed the bill at Kshs.28,000/=.

This court finds that the application to transfer the suit from a subordinate court to Environment and Land Court cannot be defined as a suit but an ordinary application filed under Section 18(1)(b) of the Civil Procedure Act, 2010. The section contemplates the transfer of an existing suit and therefore, the application in itself cannot be a suit.

The Taxing Officer misdirected herself to find that the proceedings to transfer the suit from Subordinate court to Environment and Land Court were a suit as the same was an application clearly defined in section 18 of the Civil Procedure Act, 2010.

The upshot of the above is that the reference is allowed and the Bill of Costs is ordered to be taxed under Schedule VI(o) VII. Of the Advocates Remuneration Order. I have taken into consideration the nature of the application being an application commenced in the High Court in respect of a matter in the subordinate court and the work-load involved and do grant Kshs.10,000/= as instruction fees.

Item 2 is not allowed having held that this was not a suit envisaged under section 3 of the Civil Procedure Act, 2010. Items No. 3-8 are allowed as drawn. The Taxing master's finding on Item No. 9 is not challenged hence sustained. Ultimately, the respondent is awarded costs of Kshs.17,895/=.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF APRIL, 2016.

ANTONY OMBWAYO

JUDGE