



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC MISC. APP. NO. 12 OF 2011

IN THE MATTER OF: AN APPLICATION BY ADOLFO GUZZINI AND ANN TACCALITINI GUZZINI FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS AND PROHIBITION DIRECTED AT THE CHIEF LAND REGISTRAR

IN THE MATTER OF: THE REGISTERED LAND ACT, CAP 300 LAWS OF KENYA

IN THE MATTER OF: THE REGISTRATION OF TITLES ACT, CAP 281 OF THE LAWS OF KENYA

1. ALDOFO GUZZINI

2. ANNA TACCALITINI GUZZINI.....EXPARTE APPLICANTS

=VERSUS=

THE CHIEF LAND REGISTRAR.....RESPONDENT

=AND=

1. EMMANUEL CHARO TINGA

2. LOVE ISLAND BEACH LIMITED

3. KIDZIZI PROPERTIES LIMITED.....INTERESTED PARTIES

RULING

1. What is before me is the Applicant's/1st Interested Party's Application dated 25th January, 2016.
2. In the Application, the 1st Interested Party is seeking for the following orders:-
 - (a) **THAT** the decision of the Taxing Officer delivered on 24th November 2015 in as far as the same relates to taxation of item 1 and 2 of the Party and Party Bill of Costs filed on 12th August 2014, be quantum of the award and the reasoning with respect to the said award be set aside.
 - (b) **THAT** the Honourable court be pleased to refer the matter to another Taxing Officer for re-taxation of items 1 and 2 of the Bill of Costs herein and with proper directions thereof.

(c) THAT the costs of this Application be borne by Respondents herein.

3. The Application is premised on the grounds that the Taxing Officer erred in principle in failing to appreciate the provisions of the Advocates Remuneration Order, 2009, the pleadings and the laid down principles in determining the instruction fees payable; that the Taxing Officer erred in not relying on the amount stated in the Bill of Costs as the value of the suit property and that from the inception of the suit, the crux of the matter was ownership and beneficial rights of the suit property.
4. It is the Applicant's case that in considering what amount to charge for receiving instructions, the Taxing Officer ought to have considered the value of the suit property.
5. In his Replying Affidavit, the Ex-parte Applicants/Respondents deponed that their main concern in the Judicial Review matter was that parcel of land known as Kilifi/Jimba/1126 encroached on his land known as L.R. No. 945; that at no time was the claim over the whole land known as Kilifi/Jimba/1126 and that the claim for Kshs.12,500,000 as instruction fees was manifestly excessive and without any legal basis.
6. The Respondent deponed that in Judicial Review Applications, getting up fees is not payable and that the Taxing Officer was justified in declining to award the amount.
7. According to the Respondent, the failure by the Applicant to attach a copy of the decision of the Taxing Master that he seeks to impugn makes the entire Application defective.
8. The Applicant's advocate submitted that he did write to the Taxing Master vide a letter dated 27th November, 2015 requesting her to furnish him with the reasons and grounds for taxing the amount awarded; that the Applicant herein has not been furnished with the said reasons and that that explains why the reasons of the Taxing Master were not attached to the Application.
9. The Applicant's counsel submitted that the Taxing Master mis-directed herself in awarding the 1st Interested Party Kshs.100,000 as instruction fees; that the sum of Kshs.100,000 is unreasonable considering that the issues raised in the suit touched on the ownership of the suit property.
10. According to the Applicant's counsel, the Applicant was entitled to a sum of Kshs.12,500,000 because the value of the suit property was ascertained by the Government Valuer for purposes of payment of stamp duty and that they were also entitled to getting up fees pursuant to the Advocates Remuneration Order, 2009.
11. Before I delve into the merits of the Reference, I will have to firstly deal with the issue of whether a Reference challenging the decision of a Taxing Master is competent without the reasons of the Taxing Master in respect to the taxed costs being given.
12. The Applicant herein has deponed that although his advocate requested for reasons from the Taxing Officer as to how she taxed the Bill of Costs, the Taxing Officer did not respond to the said request.
13. When the said reasons were not forthcoming, the Applicant none the less filed the Reference dated 25th January, 2016.
14. I have perused the court file. After the Ruling of the Taxing Officer in respect of the Bill of Costs that was delivered on 25th November, 2015, the Applicant's advocate requested for reasons for her decision vide a letter dated 27th November, 2015.
15. The stamp on the face of the letter shows that it was received in the registry on 8th December 2015 and the same was placed before the Taxing Officer on the same day.
16. However, there is no indication in the file to show that the Taxing Officer responded to the said letter.

17. Clause 11(1) and (2) of the Advocates (Remuneration) Order, 2009 provides as follows:-

“Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. The taxing officer shall forthwith record and forward to the objectors the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to Judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”

18. The requirement for the furnishing of the reasons for the decision of the Taxing Officer is a mandatory pre-requisite before a Reference can be filed. In the case of **Wanga & Co. Advocates -VS- Busia Sugar Company Ltd (2004) 1 KLR 506, Sergon J** rightly held as follows:-

“The jurisdiction of the High Court to challenge the decision of a taxing officer can only be exercised after the taxing officer has given reasons for his or her decision pursuant to paragraph 11(2) of the Advocates Remuneration Order.”

19. The Applicant having admitted that the Taxing Officer did not respond to his advocate's letter dated 27th November, 2015, which was filed in court within the requisite period of fourteen days, I find that the Reference was prematurely filed.

20. Considering that it is not the Applicant who is to be blamed for filing the Reference without the reasons of the Taxing Officer, I shall strike out the said Reference but with no orders as to costs.

21. For those reasons, this court makes the following orders:-

(a) The Chamber Summons dated 25th January, 2016 and filed on 10th February, 2016 is struck out with no orders as to costs.

(b) The Taxing Officer to provide to the Applicant the reasons for her Ruling of 24th November, 2015.

Dated, signed and delivered in Malindi this 4th day of **November**, 2016.

O. A. Angote

Judge