



IN THE COURT OF APPEAL

AT NYERI

(CORAM: G.B.M. KARIUKI, JA (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. 13 OF 2012

BETWEEN

JOHN MUGAMBI & 21 OTHERS.....APPELLANTS/APPLICANTS

AND

KENYA NATIONAL ASSURANCE

COMPANY (2001) LIMITED..... RESPONDENT

(Being an appeal from the Ruling of the High Court of Kenya at Nyeri

(Sergon, J.) dated 17th October, 2011

in

H. C. C. C No. 21 of 2008)

RULING

1. John Mugambi and 21 others were the appellants in this appeal. They moved to the High Court in HCCC No. 21 of 2008 seeking injunction to restrain the respondent from disposing houses on **LR. No. Nanyuki Municipality/Block 8/898** in which they were the sitting tenants. Their application for injunction dated 10th March 2011 was dismissed by the High Court (**J. K. Sergon, J.**) on 23rd September 2011 and their further application dated 7th March 2011 seeking to vary or set aside the dismissal orders was dismissed on 17th October 2011. The applicants lodged the record of appeal in this appeal on 23rd January 2012 against the High Court order dated 17th October 2011 in respect of which they had given Notice of Appeal on 25th October 2011.

2. The parties recorded a consent giving the respondent the right to sell the houses subject to the applicants being given first priority to purchase.

3. The appeal was on 17th March 2014 dismissed for non-attendance at the hearing and the applicants filed a motion seeking to set aside the dismissal order and reinstatement of the appeal. It did not meet with success. It was dismissed with costs to the respondent on 3rd March 2016, hence the Bill of Costs filed by the respondent.

4. Taxation of Bills of Costs in this Court is governed by Part 5 of the Court of Appeal Rules.

5. There are only two issues in this application. First, whether the Taxing Officer based the taxation on the Advocates Remuneration Order (under the Advocates Act) as contended by Mr. Mwangi Kariuki, learned counsel for the applicants and secondly whether the amount in respect of which the Bill of Costs is taxed is excessive, effectively meaning that the Taxing Officer exercised her discretion wrongly.

6. The impugned ruling on taxation is dated 26th January 2017 and was signed by **J. Wambilyanga**, qua Deputy Registrar of this Court who under Rule 111 (1) of Part 5 of the Court of Appeal Rules as read with Rule 2 thereof is constituted a Taxing Officer.

7. The Bill of Costs dated 17th July 2016 before the Taxing Officer for taxation was party and party Bill of Costs and was filed by the respondent, **Kenya National Assurance Company (2001) Limited**. Item number 1 of the Bill related to instructions fees and sought payment of Kshs 7.5 million. The appellants' counsel opined that only Kshs 1500/= was payable. Under the Third Schedule of the Court of Appeal Rules, paragraph 9 (1), instructions fees for making or opposing an application to be allowed "shall be such sum as the Taxing Officer shall consider reasonable but shall not be less than one thousand shillings. Under paragraph 9 (2) of the Third Schedule, instructions fees to appeal or oppose an appeal to be allowed shall be such sum as the Taxing Officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, important and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.

8. In her ruling, the Taxing Master is faulted for referring to "paragraph 1(b) of th ARO (i.e. Advocates Remuneration Order) which applies to taxation in the High Court. But a careful perusal of the ruling shows that the Taxing Officer referred to the ARO as a guide to help her exercise her discretion in determining what was fair and reasonable while taxing the item on instructions fees. On items 2 and 3 of the Bill, the Taxing Officer referred to the Third Schedule of this Court's Rules. It was not suggested by counsel for the respondent that the taxed amount was inflated or went up as a result of the reference to the ARO. Counsel for the respondent was being flippant when he suggested that item 1 should have been taxed in the sum of Kshs 1,500/= and Kshs 7,498,500/= taxed off. Other than what I have stated above, it was not shown to me that the Taxing Officer exercised her discretion wrongly. In my view, and regardless of whether I would have taxed item No. 1 on instruction fee differently, I see no basis for interfering with the discretion of the Taxing Officer. This answers both issues. I see no merit in this reference. There is evidence to show that wrong principles were applied by the Taxing Officer or that the amount in which the Bill was taxed was excessive. In the result, I dismiss the reference.

Dated and delivered at Nairobi, this 20th day of December, 2017

G. B. M. KARIUKI SC

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR