



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

MISCELLANEOUS APPLICATION NO. 51 OF 2019

LESINKO NJJORGE & GATHOGO ADVOCATES..... APPLICANT

-versus-

INVESCO ASSURANCE CO. LTD.....RESPONDENT

IN

NAROK PMCC NO. 170 OF 2013

BETWEEN

DISMAS SAMSIDI.....APPLICANT

-VERSUS-

TABITHA MOKAYA.....1ST RESPONDENT

JAMES GISEMBA.....2ND RESPONDENT

JUDGMENT

[1] By a Notice of Motion dated 19th November 2020 expressed to be brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya, the applicant/advocate Wilson Gathogo T/A Lesinko Njoroge & Gathogo Advocates seeks for orders:

- a. That judgement be entered in favour of Lesinko Njoroge & Gathogo Advocates against Assurance Company Limited for the sum of Kshs. 122,592.00.**
- b. That a decree be issued pursuant to the judgment in (1) above.**
- c. That there be no order as to costs.**

[2] The application is predicated on grounds set out in the application and supporting affidavit of Wilson Gathogo sworn on 19th November 2020.

[3] According to the applicant, he lodged one (1) client-advocate bill of cost against the client/Respondent. Taxation of the said advocate/client bill of costs was done on 3rd February 2020 by the Deputy Registrar Adelaide Sisenda in the sum of kshs 122,592.00; annexed is the ruling of same date. A Certificate of Taxation dated 3rd March 2020 annexed hereto was issued and which he seeks to be adopted as decree of the court for purposes of enforcement and payment by the respondent. The Certificate of Taxation has not been set aside or stayed by the court or appealed against or any reference filed thereto.

[3] On 18/01/2021 the applicant confirmed service and produced an affidavit of service to that effect. The application was unopposed and therefore urged the court to allow it.

Analysis and Determination

[4] I have carefully considered the application by the applicant. On 10th December 2020 when the matter came up under certificate of urgency, I directed the applicant's counsel to serve the Respondent and upon service the Respondent was to file and serve replies within 7 days thereof; the application was set down for hearing on 18th January 2021.

[5] On 18.01.2021, the Respondent, although served, did not attend or send a representative for the hearing of the motion. The application is therefore not opposed. Nonetheless, I will determine the motion on its merits.

[6] In the case of **L.N. Ngolya and Company Advocates vs Jackson Mithi Kilango** [2008] eKLR Lenaola J (as he then was) was faced with pertinent procedural question of whether, upon taxation of costs, an advocate can execute for the recovery of the taxed costs without filing a suit for judgment on the Certificate of Costs. In paragraph 6 of the judgment in the **LN. Ngolya & Company Advocates** (ibid) the court held that once costs are taxed, then Section 48 and Section 49 of the Act became operational and the advocate should follow through on the steps provided to institute a suit for recovery of costs and obtain a judgment and decree capable of being executed.

[7] The Certificate of Costs provides the basis for exercise of jurisdiction by the court to enter judgment for the taxed costs in accordance with Section 51(2) of the Advocates Act below:

“The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

[8] Similar position was reiterated in the case of **Musyoka & Wambua Advocates v RustamHira Advocate (2006) eKLR** where it was held: -

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....

[9] The procedure provided in section 51(2) of the Advocates Act aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.

[10] In the present case, there is no dispute of retainer of the Advocate to act in **NAROK PMCC NO. 170 OF 2013** for which costs were taxed. The Certificate of Costs has not been set aside or altered. I have not been shown any reference against the decision of the taxing master herein. Accordingly, I find the application by the advocate/applicant merited. I hereby enter judgment for the advocate in terms of the Certificate of Costs dated 3rd February 2020 and issued on 3rd March 2020. As a legal consequence, a decree shall be drawn accordingly. Needless to state that, execution of the decree is in accordance with the provisions of the Civil Procedure Act and Rules. As the applicant sought, there will be no order as to costs.

Dated, signed and delivered in virtual court at Narok this 25th day of February 2021.

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F. GIKONYO

JUDGE

In the Presence of:

1. Mr. Kasaso – Court Assistant
2. Lemein holding brief for Lesinko Njoroge for the Applicant
3. Respondent - absent

F. GIKONYO

JUDGE