



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

MISC. CIVIL APPLICATION NO. 288 OF 2012

HARRY GAKINYA T/A

HARRY GAKINYA & CO. ADVOCATES.....RESPONDENT

-VERSUS-

RIFT VALLEY AGRICULTURAL

CONTRACTORS LIMITED (RVACL).....APPLICANT

RULING

1. The Respondent/Advocate herein filed his Advocate-client Bill of costs on the 25th August 2014, arising from legal services rendered in **Nakuru HCCC No. 397 of 1999**, in the sum of Kshs.413,971.50/=

It was taxed exparte and as drawn, on the 21st May 2018 in the sum of Kshs.413,971.50, and a 30 days stay of execution allowed in favour of the Applicant/client.

2. **By an application dated 10th April 2019** the Applicants, pursuant to provisions of **Section 51(2) of Advocates Act, and Par. 7 of the Advocates Remuneration Rules** sought that judgment in terms of the certificate of costs in the sum of Kshs.413,971.50/=, plus interest at 14% per annum and costs be adopted as a judgment and decree of this court.

The application is premised on grounds that there is no objection/reference filed challenging the taxation.

3. The application is opposed by a replying affidavit sworn by one Benson Thiru Karanja, one of the directors of the respondent on the 11th July 2019.

Ms. Badhia advocate for the respondents argued the application on behalf of the respondents and urged that it raises issues on the primary suit, **Nakuru HCC No. 397 of 1999**.

4. It is argued that at the date the taxation was done there were two pending applications, dated 8th October 2014 and 20th August 2014, and therefore the taxation renders the certificate of costs a nullity.

More importantly, it is averred (Par 12 and 13) that by a consent recorded by the parties advocates before the taxing officer, on the 21st August 2007, when the bill dated 6th March 2007 came up for taxation, it was compromised in the sum of Kshs.234,036/=.

5. At the time, Harry Gakinya Advocate was on record representing the plaintiff, while Karanja Advocate appeared for the plaintiff/respondent in the taxation, and Ms. Muturi advocate, represented the defendant/Applicant in the taxation (Harry Gakinya Advocate).

6. I have seen the consent. In my opinion, the said consent settled the matter of the advocates costs, arising from the advocate-client bill of costs filed on the 1st August 2007.

7. By his affidavit sworn on the 11th September 2008 in support of the application dated 20th August 2014, seeking an order of stay of execution of the decree on costs arising from the Bill of costs dated 24th August 2012.

The deponent, Benson Thiru Karanja (same deponent hereof) deponed to have fully satisfied the consent decree for payment of costs in the primary suit.

8. It is unfortunate that even with these averments on the satisfaction of the advocates costs, compromised by the consent recorded on the 21st August 2007, the applicant opted not to file any responses, but submitted only that the certificate of taxation obtained was final and not subject to challenge there having been no reference against the certificate of costs.

9. It is the duty of the court to administer justice to all persons and to do so guided by informed submissions by the parties and court records, if any, and taking into account that rules of procedure are not made to blinden the court, but to assist it in having a formal manner (procedure) of approaching the court. They are not cast in stone, and whenever necessary, the stones must be overturned for justice to be seen to be done.

10. The court in **Shabbir Ali Jusab –vs- Anaar Osman Gamrai & Another (2013) e KLR, the Supreme Court in Civil Appeal No. 1 of 2013**, citing **Raila Odinga –vs- IEBC & Others (Petition No 5 of 2013)** rendered that

“the essence of that provision is that a court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties....”

See also **ELC suit No. 58 of 2009 Kenya Anti-Corruption Commission –vs- George Fred Onyango & 4 Others (2018) e KLR**, and **Article 159(2) (d) of the 2010 Constitution**.

11. I have carefully interrogated the two bills of costs filed by the applicant.

Both are in respect of the same primary suit, **Nakuru HCCC No. 397 of 1999**.

12. By the Respondent’s submissions in support of its objections, and which were not challenged by the applicant, **I come to the conclusion that the Applicant/Advocate legal services, stated in the Advocate-client Bill of costs dated 6th March 2007 were compromised by consent of the parties advocates on the 21st August 2007 at Kshs.234,036/= and cannot be revisited.**

13. To that extent, I find that the bills of costs dated 24th August 2012, and taxed on the 21st May 2018 in the sum of Kshs.413,971.50/= to have been *res judicata* and the certificate of costs issued thereafter, on the 18th September 2018, cannot be allowed to stand, for reasons stated above. To allow it would be to unjustly enrich the applicant unfairly. It is a nullity. It ought not have been filed in the first place, as it was settled by compromise consent order dated the 21st August 2007.

The Respondent Advocates shall pay costs of this application to the Applicant.

Orders accordingly.

Delivered, signed and dated at Nakuru this 30th day of January 2020.

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J. N. MULWA

JUDGE