



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**MISC. CIVIL APPLICATION NO. 383 OF 2011**

**HARRY GAKINYA T/A**

**HARRY GAKINYA & CO. ADVOCATES.....APPLICANT**

**-VERSUS-**

**RIFT VALLEY AGRICULTURAL**

**CONTRACTORS LIMITED (RVACL).....RESPONDENT**

**RULING**

1. Before me for determination is the **Applicant's application dated 10<sup>th</sup> October 2019** brought under provisions of Section 51(2) of the Advocates Act and Paragraph 7 of the Advocates Remuneration Rules among others.

2. The applicant seeks for orders that judgment be entered in favour of the Advocate against the Respondent/client in the sum of Kshs.709,489/= in terms of the certificate of costs dated the 7<sup>th</sup> March 2017 with interest, and the same be adopted as a decree of the court.

3. The application is premised on grounds that the certificate of costs, in respect of legal fees issued on the 7<sup>th</sup> March 2016 upon the Advocate-client bill of Costs dated 28<sup>th</sup> November 2011, filed on the 29<sup>th</sup> November 2011 has not been objected to nor a reference filed to challenge the same.

The applicant advocate supports the application with his affidavit sworn on the 10<sup>th</sup> April 2019. The certificate of costs is annexed thereto and marked "JHGI".

4. The Respondent opposes the application by a Replying Affidavit sworn by one Benson Thiru Karanja, a Director of the company, on the 11<sup>th</sup> July 2019 and filed on even date.

I have considered parties affidavits and oral submissions.

5. The objections are contained at paragraph 6 of the Replying affidavit that

*"The law firms of Githui & Co. Advocates were improperly on record for the Applicants and as such all pleadings and proceedings conducted by the aforementioned firm are a legal nullity and of no legal consequences and equally all pleadings filed by them without being properly on record are subject to being struck out forth."*

6. It is averred that as at 2<sup>nd</sup> May 2019 when the bill of costs was filed, Harry Gakinya & Co advocates were on record, that they had drawn the bill up to 15<sup>th</sup> May 2013, when Githui & Co Advocate filed a replying affidavit sworn by Harry Gakinya dated 15<sup>th</sup> May 2019 and filed on 17<sup>th</sup> May 2013.

7. I have confirmed that an application was filed by the applicant dated 1<sup>st</sup> February 2018 seeking similar orders.

A perusal of the court record and proceedings shows that the notice of motion dated **1<sup>st</sup> February 2018** was not withdrawn, and is pending for hearing. To that extent I agree with Ms. Bhadhia advocate for the Respondent that one of the two applications ought to be withdrawn, to give way for hearing of the other.

8. There is no dispute that there is a certificate of costs issued pursuant to the taxation of the Advocate-client bill of costs filed in this cause

filed on the 29<sup>th</sup> November 2011.

It was taxed and a decision made on the 26<sup>th</sup> November 2013, which was set aside by an order of the court on the 10<sup>th</sup> October 2014 (Emukule J), who ordered the Bill to be retaxed.

9. The record further shows that the bill was later taxed (parties having filed submissions) by the Deputy Registrar on the **19<sup>th</sup> October 2016 and a certificate issued in the sum of Kshs.709,489.17 on the 7<sup>th</sup> March 2017.** This certificate of costs is the subject certificate in this application.

10. The court record does not show that the respondent objected to the taxation, nor filed a reference in terms of **Rule 11(1) of the Advocates Remuneration Order**, that provides that if any party is dissatisfied with the taxing officer's decision must give notice to the taxing officer within 14 days, stating the items objected to and the taxing officer is required to give reasons for the taxation, with the High Court having discretion to extend time under **Rule 11(4)** for filing of the objections, review or reference.

11. The above procedure has not been followed by the Respondent.

That leaves the applicant without any objection in the matter of adoption of the certificate of costs and entry of judgment pursuant to **Section 51(2) of the Advocates Act**, that gives finality of a certificate of costs unless set aside or altered by the court, and allows the court to order for entry of judgment for the sum certified and costs, and further orders for payment of interest at 14% per annum on the costs and disbursements, provided that the claim for interest is raised before the amount of the bill has been paid or tendered in full – See **Paragraph 7 of the Advocates Remuneration Order**, and after one month after delivery of the Bill to the client.

12. The Respondent has not alluded to have filed any objection by way of reference against the taxed bill of costs.

Without such objection, then, any objection to the certificate of costs being adopted as a judgment of the court is incompetent. See **KTK Advocates –vs- Baringo County Government (2018) e KLR, Muturi Mwaniki & Wamiti Advocates –vs- Edward Mukundi Karanja & 2 Others (2017) e KLR, and Githinji Kimamo & Co. Advocates –vs- Invesco Assurance Co. Ltd (2018) e KLR.** The thread running across is that a certificate of the taxing officer by whom any bill has been taxed shall, unless set aside or altered, 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 an order that judgment be entered for the sum, certified to be due, where the retainer is not disputed, with costs and interest.

13. The issues raised by the Respondent on representation of the applicant by Githui & Company Advocates, without being properly on record, in my view, come too late in the day.

It is worth noting that the mode of taxation was by written submissions by consent of both the applicants and the respondents advocates.

It serves no purpose in my view, to go back now, three years after, to fault the way the taxation was conducted, without taking into account that it was by consent of its advocates, then on record. That consent is on record, having not been set aside or varied, remains valid.

It is also necessary to note that the initial taxation of the applicant's Bill of costs was set aside by the court on the 13<sup>th</sup> November 2013 (Wendo J), and again on the 10<sup>th</sup> October 2014 (Emukule J).

14. Litigation ought to come to an end. I do not think the ends of justice would allow the taxations to continue being set aside, over and over, in favour of the respondents, basically on the same grounds, only differently stated.

15. There are two similar applications on record.

Having found that both applications are similar, seeking same orders, and this being agreed by the respondent, and upon exercise of my discretion, and having considered provisions of **Section 1A, 1B and 3A of the Civil Procedure Act** as well as **Article 159(2) (d) of the Constitution** that provides for the overriding objective of the Act, being to facilitate the just, expeditious, proportionate resolution of civil disputes, and being minded that undue procedural technicalities and flaws in pleadings should not hinder the administration of justice, **I proceed to strike out the Notice of Motion dated the 1<sup>st</sup> February 2018, leaving the motion under consideration dated the 10<sup>th</sup> April 2019.**

**16. Accordingly, I allow the application dated 10<sup>th</sup> April 2019 and adopt the certificate of costs dated the 7<sup>th</sup> March 2017 in the sum of Kshs.709, 489/= as a judgment of the court on the costs, and further direct that the said sum do attract interest at 14% per annum from the 1<sup>st</sup> February 2018 (date based on the 1<sup>st</sup> application for judgment) plus costs assessed at Kshs.5,000/= on the application.**

Orders accordingly.

**Delivered, signed and dated at Nakuru this 30<sup>th</sup> day of January 2020.**

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**J. N. MULWA**

JUDGE