



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL CASE NO. 103 OF 2018

JAMES AGGREY MWAMU

T/A MWAMU & CO. ADVOCATES.....APPLICANT/RESPONDENT

-VERSUS-

THE COUNTY ASSEMBLY OF MIGORI....RESPONDENT/APPLICANT

RULING

The application dated 19th November 2019, was brought by the **COUNTY ASSEMBLY OF MIGORI**, who are seeking an enlargement of time to lodge a Notice of Objection to the taxed costs.

1. The application is premised on the following grounds, as set out on its face;

“1. The Respondent herein allegedly provided legal services to the Migori Public Service Board; County Assembly Service Board and the County Government of Migori in Kisii Constitutional Petition No. of Migori in Kisii Constitutional Petition No.34 of 2014.

2. The Respondent ultimately filed the Advocate/Client Bill of Costs dated 18/06/2018 in a bid to tax and recover his legal fees against his Clients.

3. The aforesaid Bill of Costs prayed for Kshs 7,519,282.40 cts, seemingly the same was taxed as drawn on 25/07/2018 and a Certificate of Costs dated 20/08/2018 duly extracted.

4. The Taxing Officer’s decision was rendered on 25/07/2018 and the applicant herein, Migori County Assembly, being dissatisfied with the taxed costs, intends to issue a Notice of Objection pursuant to Paragraph 11 (1) of the Advocates Remuneration Order, with a view to roll out a reference.

5. In the circumstances, it is obvious that the 14 day period within which a Notice of Objection to the taxing officer’s ruling on taxed costs on 25/07/2018 has lapsed.

6. Paragraph 11 (4) of the Advocates (Remuneration) Order 1962, clothes the Honourable Court with discretion to enlarge time within which such Notice of Objection may be presented, and/or the 14 day period the taxing officer is bound to have assigned his reasons on the objected taxed items in the Notice of Objection.

7. The Applicant avers that there was no Advocate/Client relationship between her and the Respondent, in view of the fact that the County Assembly Service Board has the distinct statutory mandate to procure goods and services on behalf of the Applicant.

8. The Applicant never issued an instruction letter to the Applicant to act on her behalf, and it is

likely that the County Government of Migori, the executive, which engaged the Respondent in the Kisii Constitutional Petition No.34 of 2014, mainly contested the Constitutional members of the Migori County Public Service Board.

9. Notwithstanding the foregone, the Applicant equally avers that the taxed costs of Kshs 7,519,282.40 cts is manifestly excessive, contrary to the laid down principles established in the Assessment of Bill of Costs.

10. The Applicant concedes that this application has been brought 1½ years late, when the Notice of Objection should have been lodged but this has been occasioned by consultation between the Assembly and the Execution, on which the organ ought to have taken up the Reference in view of the colossal sum.

11. The Applicant is constitutionally entitled to Fair Administrative Action as envisaged under Article 47 of the Constitution, and indeed offers to recompense any prejudice suffered and input of the Respondent's time loss in these proceedings so far, by way of reasonable "Thrown Away Costs."

12. There is a public interest element to dispute, whereby funds should be paid out in the clearest and fairest of cases."

2. I have set out the Grounds extensively because when the Applicant was canvassing the application, it stated that the said Grounds constituted its submissions.

3. The supporting affidavit which was sworn by **EMMANUEL ABALA**, the Acting Clerk of the County Assembly of Migori, was essentially in the same language and style as the Grounds upon which the application was founded.

4. In answer to the application the Respondent pointed out that the Applicant never responded to the Bill of Costs when it was served upon them.

5. Even after the Bill of Costs was taxed, the Applicant was served with an application through which the Respondent herein was seeking judgment, on the basis of the taxed costs.

6. I find that the Applicant was duly served with the Advocate/Client Bill of Costs. Therefore, the Applicant was accorded an opportunity to respond to the said Bill of Costs.

7. If the Applicant was disputing retainer, it had an opportunity to do so.

8. If the Applicant was challenging the sums set out in the Bill of Costs, it had the opportunity to do so during the taxation process.

9. The Applicant has not provided this court with any reasonable explanation for its failure to either challenge retainer or to participate in the taxation process.

10. Having been served, the Applicant was provided with an opportunity to forward its case.

11. The right to fair administrative action does not imply that the tribunal or organ which has the mandate to adjudicate in a matter must hear both parties.

12. The parties are entitled to an opportunity to be heard, before the Tribunal or the organ makes a determination.

13. If a party has been accorded an opportunity to be heard, but fails to utilize that opportunity, it cannot be heard to complain that its right to a fair administrative action had been violated.

14. The Applicant submitted that there is an element of public interest in the dispute, so that funds ought only to be paid out in the clearest and fairest cases.

15. However, the Applicant did not tell this court how, if at all, the matter before me was either not clear or not fair.

16. In my considered view, this application seeks to challenge a judicial process, in which the court gave to all the parties, an opportunity to be heard at every stage, before decisions were made.

17. I find no basis for the insinuation that the case might have been lacking in either clarity or fairness.

18. I do appreciate that because payment of the decretal amount would be made out of public funds, there is an element of public interest in the matter.
19. It was the responsibility of the Applicant to take all the requisite actions, with a view to safeguarding public interest.
20. By failing to respond to the Bill of Costs or to the application for judgment, the Applicant appears to have consciously chosen to abdicate its responsibility of safe-guarding public interest.
21. It appears to me that the Applicant was now shedding crocodile tears, by invoking the issue of public interest.
22. Nonetheless, this Court is fully alive to the possibility that the Applicant may wish to later heap blame on the Judiciary for compelling it to pay the decretal sum. Such an intention would be wholly unjustified because the Applicant had been given every opportunity to state its case before the court made decisions.
23. However, in order to lay bare the complete transparency of the justice system, in the unique circumstances of this case, I do hereby grant to the Applicant an extension of **SEVEN (7) DAYS**, within which to lodge a Notice of Objection to the taxed costs.
24. The Applicant shall pay to the Respondent, the costs of the application dated 19th November 2019.
25. Finally, as all the actions of the Respondent have been conducted in a regular manner, thus far, I direct that the Applicant shall deposit the decretal amount in a Joint Interest-Earning Account, in the names of the Advocates representing the two parties: The said deposit must be in place within the next 30 days, failing which the extension granted herein shall stand vacated.
26. It is so ordered.

DATED, SIGNED and DELIVERED at KISUMU

This 29th day of April 2020

FRED A. OCHIENG

JUDGE