

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS APPLICATION NO 438 OF 2015

MUGAMBI MUNGANIA & CO.....ADVOCATE

VERSUS

JOHN KUNGU KIARIE.....CLIENT

RULING (2)

1. In its Notice of Motion application dated 28th February 2018 and filed on 2nd March 2018, the Advocate had sought entry of judgment against the Client for the sum of Kshs 896,745/= being taxed costs together with interest thereon at the rate of fourteen (14%) per cent from 30th July 2015 until payment in full. The said application was supported by the Affidavit of Lawrence Mugambi Mungania that was sworn on 28th February 2018.

2. In response to the present application, the Client's advocate, Owino Opiyo, swore a Replying Affidavit on 20th February 2019. The same was filed on 21st February 2019. He was emphatic that the date of 19th October 2017 when the Advocate-Bill of Costs was supposedly taxed was never taken by the consent of the parties and that if the same was taken *ex parte*, then his firm was never served with a Hearing Notice for the hearing of the Advocate- Client Bill of Costs.

3. He admitted that his firm received the Notice notifying them of the Hearing date on 16th November 2017 but under protest noting the said Bill of Costs was yet to be heard and hence filed an application dated 10th November 2017 on 15th November 2017 to arrest the situation. He averred that the same was not heard and they were directed to take directions the following day, 16th November 2017, when the matter was not listed. He added that the file could not be found both in the Taxing Master's chambers and at the Registry.

4. It was his further contention that the Client would be greatly prejudiced as not only could he not be able to proceed without a copy of the Ruling, the court could not come up with a conclusive determination without that copy. He thus proposed that the court file be reconstructed and that the Advocate- Client Bill of Costs be referred to a taxing master for fresh taxation.

5. In his Notice of Motion application dated 26th April 2018 and filed on 27th April 2018, the Client sought that he be allowed to defend, oppose and/or submit on the Advocate's Bill of Costs. His application was supported by the Affidavit of his advocate, Owino Opiyo, which was sworn on 26th April 2018. The said application was opposed by the Replying Affidavit of Lawrence Mugambi Mungania that was sworn on 28th May 2018.

6. After considering the said application, this court allowed the Client's Notice of Motion application dated 26th April 2018 and filed on 27th April 2018 after it came to the conclusion that it was in the interests of justice that the Advocate- Client Bill of Costs be heard a fresh as there was no evidence that the Client had notice of the date the said Bill of Costs was taxed. The present application cannot therefore proceed for hearing. As the outcome of the either application abides the other, this court did not find it necessary to set out verbatim what it had found in its Rulings of the Client's said Notice of Motion application.

DISPOSITION

7. Accordingly, the upshot of this court's decision was that the Advocate's Notice of Motion application dated 28th February 2018 and filed on 2nd March 2018 was not merited and the same is hereby dismissed. Costs of the application will be in the cause.

DATED and DELIVERED at NAIROBI this 30th day of July 2020

J. KAMAU

JUDGE