



IN THE HIGH COURT OF KENYA AT KISII

CORAM: D. S. MAJANJA J.

MISCELLANEOUS CIVIL APPLICATION NO. 36 OF 2017

IN THE MATTER OF THE ADVOCATES ACT (CAP 16 LAWS OF KENYA)

AND

IN THE MATTER OF THE TAXATION COST BETWEEN

ADVOCATE AND CLIENT

AND

IN THE MATTER OF KISII HCCC NO 17 OF 2016

BETWEEN

VINCENT CHOKAA T/A V. CHOKAA & CO. ADVOCATES....ADVOCATE/ RESPONDENT

AND

LOCAL AUTHORITIES PROVIDENT FUND BOARD (LAPFUND)....CLIENT/APPLICANT

RULING

1. The Local Authorities Provident Fund Board (LAPFUND) (“the Client”) filed Chamber Summons dated 15th May 2019 seeking the following orders;

- a. That the Certificate of Taxation dated 25/1/2019 and all consequential orders be stayed and/or be set aside *ex debito justitiae* ;
- b. That alternatively, the Certificate of Taxation dated 25/1/2019 and all consequential orders be stayed and/or be set aside pending the hearing and resolution of this application;
- c. That the bill of costs dated 27/6/2017 be referred afresh for taxation;
- d. That this honourable court do review its order dated 26th November 2018; and
- e. That costs of this application be provided for.

2. The application is based on the grounds on the face thereof and supported by an affidavit sworn on the same day by its legal manager, Kellen Njue. Before going into parties’ arguments and the merits of the application, it is necessary to set out the events leading up to the application.

3. Having represented the Client in ***Kisii HCCC No. 17 of 2016, V. Chokaa & Co. Advocates*** (“the Advocates”) filed an advocate/client bill of costs dated 27th June 2017 seeking its fees amounting to Kshs. 54,901,834/=. The bill was taxed at Kshs. 1,589,725/= by, Hon. V. Karanja, DR. The Advocates filed a reference to this court from that decision as they were aggrieved. I considered the reference and by the ruling dated 13th August 2018, I directed that assessment be carried out by another officer.

4. When the bill of costs was placed before Hon. P. Wamucii, DR for taxation, she dismissed the bill of costs for want of jurisdiction by ruling dated 9th November 2019. The Advocates approached the court once again by Chamber Summons dated 15th November 2018 to set aside that decision. On 26th November 2018, I found that the Deputy Registrar had no jurisdiction to determine whether there was a retainer.

If the issue had been raised, which it had not, it was an issue reserved for the High Court under **paragraph 12** of the **Advocates Remuneration Order** ("the **ARO**"). I set aside the ruling and directed that the bill of costs be taxed by the Deputy Registrar. It was taxed at Kshs. 54,804,907/= by a ruling dated 25th January, 2019.

5. Thereafter the Advocates lodged an application dated 29th January 2019 in which it sought judgment for Kshs. 58,804,907/- together with costs and interest at 14% per annum. After having been satisfied that the application was served on the Client's advocate on record, I allowed the application by my ruling dated 18th February 2019. Thereafter, the proceeded with execution of the judgment and decree thus precipitating the application now before the court.

6. After reserving the matter for decisions and after reviewing the history of the matter that I have outlined above, it is clear that the Client does not refer to or indeed challenge the judgment of this court entered against it on 18th February 2019. It appears both parties and indeed the court proceeded with the matter without regard to the judgment. A judgment constitutes a merger of all the issues in the proceedings and unless it is set aside, the court cannot permit a collateral attack on that judgment which is lawful and regular. I therefore find and hold that the application dated 15th May 2019 is incompetent and is therefore struck out.

DATED and **DELIVERED** at **KISII** this **15th** day of **AUGUST** 2019.

D.S. MAJANJA

JUDGE

Mr. Madara instructed by Tengo Madara & Co. Advocates for the applicant

Mr. Keyonzo instructed by V. Chokaa & Co. Advocates for the respondent