



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISC CAUSE NO. 140 OF 2013
IN THE MATTER OF THE ADVOCATES' ACT
AND
IN THE ADVOCATES REMUNERATION ORDER
AND
IN THE MATTER OF THE ADVOCATE CLIENT BILL OF COST
SINGH GITAU ADVOCATES.....ADVOCATE/RESPONDENT
VERSUS
INTRA LAB SERVICES LIMITED.....CLIENT/APPLICANT
RULING

1. **Singh Gitau Advocates** (the advocate) were at one time representing **Intra Lab Services Limited** (the client). The advocate filed an Advocate/Client bill of costs which was taxed on **17th May 2013** at Ksh 59,187/=. A certificate of taxation for that mount was issued.

2. There are two applications under consideration. The Notice of Motion application dated **21st March 2018** is filed by the advocate. By that application the advocate seeks the entry of judgment for the taxed amount. The **Notice of Motion** application dated **28th May 2018** is filed by the client. The client by that application seeks the setting aside of the taxation of 17th May 2013.

3. It becomes obvious that if the client's application, to set aside the taxation, is successful there will be no basis to consider the advocate's application for entry of judgment of the taxed amount.

4. The client's application is premised on the ground that the client was not served with the Notice of Taxation and as a consequence the taxation proceeded in its absence. The application is supported by the affidavit of **Magugu G. Watene**. He deponed in part as follows:

- ***THAT** I am a Director of the Applicant/Client well versed with the facts of this matter and duly authorised and competent to swear this affidavit.*
- ***THAT** on or about 16th April, 2013, the Advocate/Respondent herein filed a Miscellaneous*

Cause No. 140 of 2013 for the taxation of the Advocate Client Bill of Costs arising from of CMCC No. 1505 of 2009 (**Intra Lab Services Limited vs K-Rep Bank Limited**).

- **THAT** it is only upon being served with the Notice of Motion dated 21st of March 2018 that I became aware of the Taxation Ruling dated 17th May 2013 delivered against myself.
- **THAT** prior to the service of the abovementioned documents, I had no knowledge that the Advocate/Respondent had filed a Bill of costs for taxation against me and that a ruling to that effect had already been delivered.
- **THAT** in the effort to defeat the ends of Justice the Bill of Costs and the Notice of Taxation were never served upon me or my advocate on record as is mandatory.
- **THAT** no affidavit of service was sworn or filed by the Respondent/Advocate as is required by the Civil Procedure Rules confirming proper service was effected upon me.

5. As stated before the Advocate/Client's bill of costs was taxed on **17th May 2013**. The Advocates (Remuneration) Order provides that after taxation a party who is aggrieved by such taxation should move the court in objection to taxation by way of a Reference as provided under paragraph 11 of the aforesaid Order. In this case the aggrieved client moved the court, not by objection to taxation but under Order 22 Rule 22 and 52 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and Paragraph 11 of the Advocates Remuneration. Although the client cited paragraph 11 of the Advocates (Remuneration) Order the Procedure set out in paragraph 11 of that order was not followed in the client's application.

6. I am however of the view that because of the issue raised by the client, is that of non service of bill of costs before taxation, this court can invoke its inherent power to meet the justice of this case. The court of appeal in the case **Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wycoco Paints [2016] eKLR** had occasion to consider inherent jurisdiction and stated:

“The extent of inherent powers of the court was eloquently explained by the authors of the Halsbury's Laws of England, 4th Edn. Vol. 37 Para. 14 as follows;

“The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.” See also Meshallum Waweru Wanguku (supra)

This inherent jurisdiction is a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice.”

7. I am also persuaded by the holding in the case **KHAN & KATIKU ADVOCATES v SHABBIR MOTOR SPARES LTD [2004] eKLR** where the court was faced with similar facts as I have in this case held:

“I am of the view that the participation of the client at the taxation would not be a mere formality.

I bear in mind the principles for setting aside default orders. Harris J. in Jesse Kimani –v- McConnel (1966) E.A. 541 said that the Court should consider whether or not it would be just and reasonable to set aside or vary the judgment upon terms to be imposed. And in Mbogo –v- Shah (1968) E.A. 93, the Court of Appeal for East Africa held:

“The nature of the action should be considered, the defence if one has been brought to the notice of the Court, however, irregularly, should be considered, the question as to whether the Plaintiff can reasonably be compensated by costs for any delay occasioned, should be considered and finally I think, it should always be remembered that to deny a subject a hearing should be the last resort of a Court.”

8. The advocate did not provide proof that the client was either served with the bill of costs or the Notice of Taxation. With that view the client’s contention that it was not served is uncontroverted. Justice therefore demands the client be afforded an opportunity to participate in the taxation of the Advocate/Client bill of costs. I must therefore as of right grant the order the client seek, that is the setting aside of the taxation of that bill of costs.

9. Having concluded that taxation must be set aside there is no basis to entertain the advocate’s application. It will therefore be struck out. The client will be entitled to the costs of both application.

CONCLUSION

10. In the end I grant the following orders:

a. The Notice of Motion dated 28th May 2018 succeeds in that the taxation of 17th May 2013 is hereby set aside and the certificate of taxation dated 18th June 2013 is annulled.

b. The Notice of Motion dated 21st March 2018 is hereby struck out.

c. The client is awarded costs of the Notice of Motion applications dated 21st March 2018 and 28th May 2018.

DATED and SIGNED at NAIROBI this 28th day of November 2019.

MARY KASANGO

JUDGE

Ruling Read in Open Court in the presence of:

Sophie..... **COURT ASSISTANT**

..... **FOR THE ADVOCATE**

..... **FOR THE CLIENT**