



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. APPLICATION NO 55 of 2019

BETWEEN

ALICE NYOMENDA OERI t/a A.N.Oeri & Co. Advocates.....ADVOCATE AND

SILVANUS OSORO ONYIEGO.....APPLICANT/CLIENT

JUDGMENT

1. By a notice of motion dated 26th November, 2019 and filed on 27th November, 2019, brought under Section 1A, 1B, 3A and 27 of the Civil Procedure Rules and Article 159 of the Constitution, the Applicant/client prays for orders:

1) THAT the Honourable Court be pleased to vary, quash or set aside the certificate of Taxation herein

2) Costs be awarded to the Applicant/client

2. The motion is premised on the grounds among others that the Applicant/Client did not retain the Advocate in Kisumu Election Petition Appeal No. 22 Of 2018 which is the subject of the Bill of Costs for which the Advocates has commenced execution and further that Applicant/Client was not served with the Bill of Costs.

3. The application is supported by an affidavit sworn by the Applicant on 26th November, 2019 in which he reiterates the grounds on the face of the application.

4. In her replying affidavit sworn on 03rd December, 2019 and filed on even date, the Advocate avers dwelt on the issue of her acting for the Applicant/Client and to her affidavit annexed the judgments in the Election Petition by the High Court and by the Court of Appeal. He clarified that the Mrs. Morara in both judgment is her marital name.

5. I have considered the application in the light of the light of the affidavits on record and annexures thereto.

6. The 1st issue for consideration is whether the Applicant/Client was Ndewa, a process server by his affidavit of service sworn on 24th May, 2019, averred that he served the Bill of Costs and notice of taxation on the Applicant/Client on 09th May, 2019 at around 04.00 pm in the offices of Zablon Mokua & Company Advocates located at Popman House, 1st floor, Wing B, Suite No. 103 B where he was having a meeting but he declined to sign for them.

7. Other than state that he was not served, the Applicant/Client has not denied that on 09th May, 2019 at around 04.00 pm, he was having a meeting in the offices of Zablon Mokua & Company Advocates located at Popman House, 1st floor, Wing B, Suite No. 103 B.

8. Consequently, I find that the Applicant/Client was properly served with the Bill of Costs and notice of taxation but ignored to attend the hearing of the taxation.

9. The second issue touches on retainer with the Applicant/Client stating that the Advocate was not one of the Advocates he retained in the Election Petition Appeal but failing to disclose those that he instructed. The judgment of court in that said Election Petition Appeal and it is imprudent for the Applicant/Client to deny the obvious.

10. From the foregoing, I find that the Applicant/Client denial that he did not retain the Advocate is an afterthought meant to deny the Advocate the fruits of her judgment which this court declines to yield to.

11. From the foregoing analysis, I have come to the conclusion that the notice of motion dated 26th November, 2019 and filed on 27th November, 2019 has no merit and the same is disallowed with costs to the Advocate.

DATED AND DELIVERED IN KISUMU THIS 19th DAY OF December 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/Okodoi

For the Advocate Mr Gichoba

For the Client - N/A