



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL DIVISION

MISCELLANEOUS CIVIL APPEAL NO. 82 OF 2018

LILIAN MUSOTSI (SUING THROUGH FATHER AND NEXT FRIEND JACOB YUKA MUSOTSI)

VERSUS

LAWRENCE MBUGUA NJOROGE & ANOTHER

BETWEEN

INNOCENT G. ONDIEKI P/A GICHABA ONDIEKI & CO. ADVOCATES.....APPLICANT

VERSUS

JACOB YUKA MUSOTSI.....RESPONDENT

RULING

1. The applicant has filed a notice of motion dated 14th May, 2018 seeking for orders that:-

(a) That this honourable court be pleased to tax advocates-client bill of costs annexed herewith in respect of Kak. CMC Civil Case no. 535 of 2006, Lilian Musotsi (suing through father and next friend Jacob Yuka Musotsi) – s – Lawrence Mbugua Njoroge & another

(b) The costs of this application be provided for.

2. The application is supported by grounds on the face of the application and supporting affidavit of the applicant.

3. The grounds are that the applicant rendered professional services to the respondent in respect of Kakamega CMC Civil Case NO. 535 of 2006. That the respondent refused and or failed to pay for the services rendered necessitating the application herein.

4. The application was opposed by the respondent on the grounds that the respondent had hired and fully paid the firm of **Guto & Co. Advocates** in respect of the said civil case. That the subsequent involvement of the applicant in the case was without prior notification or consent of the respondent but was as a result of private arrangement and mutual agreement between the applicant and the firm of **Guto & Co. Advocates** in terms of which the firm of the applicant was not supposed to bill the respondent or recover from him any fees or disbursement relating to the case since the respondent had fully settled the fees with the firm of **Guto & Co Advocates**.

5. The application was argued orally in court by the applicant Mr. Ondieki and the respondent. The respondent stated that he had given instructions over the matter to the firm of Guto & CO. Advocaes. That later on he was summoned to the offices of the applicant who informed him the firm of Guto & Co. advocates had been closed and that he had taken over the case from the said firm. That he made it clear to Mr. Ondieki that he had paid the firm of Guto & Co. Advocates. Mr. Ondieki made him to sign a document to proceed with the case from where it had reached. That after judgment was delivered, Mr. Ondieki demanded payment. He refused to pay. He insisted that he had paid the former firm of advocates.

6. Mr. Ondieki on his part stated that Mr. Guto had closed his firm and moved to Nairobi. He left his files at his (Mr. Ondieki's) Offices. That the applicant went to his office and gave him instructions to proceed with the matter. After judgment was delivered the applicant engaged another firm of advocates. He refused to pay their fees. Therefore that taxation should proceed.

7. The respondent admitted that he gave the firm of the applicant instructions to proceed with the matter vide his instruction document

marked "JM3". The respondent is therefore obligated to pay the firm of the applicant their professional fees.

8. In taxing the bill where the matter has been handled by more than one advocate, the taxing officer has to bear in mind the provisions of Rule 62A of the Advocates Remuneration Order that provides that;-

(1) Where there has been a change of advocates or more than one change of advocates, the advocate finally on the record shall draw a single bill for the whole of the matter in respect of which costs have been awarded.

(2) On taxing the bill the taxing officer shall take into account the following principles, that the bill shall not be larger than if a single advocate had been employed and that the party taxing the bill shall not obtain indemnity for costs which he has not paid.

(3) The bill shall be accompanied by a certificate setting out the dates during which all advocates acted, together with all agreements for remuneration made with them, all sums paid to them for costs and whether those sums were paid in full settlement.

9. The upshot is that there is no merit in the objection filed herein. The objection is accordingly dismissed. The application dated 14th May, 2018 is therefore allowed as prayed. The court's deputy registrar is thereby allowed to proceed with the taxation of the advocate client bill of costs dated 14th May, 2018.

Delivered, dated and signed in open court at Kakamega this 19th day of December, 2019.

J. N. NJAGI

JUDGE

In the presence of:

..... N/A.....for applicant

Applicant...Absent.....

Respondent.....Present.....

Court Assistant:- ...Polycap.....

30 days right of appeal.