



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1269 OF 2002

MAINA MURAGE & COMPANY ADVOCATES.....PLAINTIFF

-VERSUS-

MAE PROPERTIES LIMITED.....DEFENDANT

RULING

1. This ruling is premised on the notice to show cause issued on 1st October, 2019 requiring the parties to show cause as to why the suit ought not be dismissed for want of prosecution since it was last in court on 9th October, 2012.
2. The plaintiff put in an affidavit in response to the notice to show cause, averring that the suit was last in court sometime in October, 2017 and not on the date indicated on the notice.
3. The plaintiff also asserted that the suit was filed as an action for the recovery of his costs derived from an advocate-client relationship which subsisted between him and the defendant, adding that the taxation on the advocate-client Bill of Costs filed by himself was only finalized on 15th February, 2017.
4. It was the plaintiff's contention that being dissatisfied with the ruling on taxation, both parties herein filed separate references to challenge the same, which references were heard before the High Court and a ruling entered on 6th December, 2018.
5. The plaintiff further stated that he is dissatisfied with the aforementioned ruling and intends to appeal against the same, adding that he has since filed a notice of appeal to that effect.
6. The defendant similarly put in an affidavit sworn by its advocate, *Victor Muthuri* who asserted that prior to issuance of the notice to show cause, the parties last appeared before the court on 29th September, 2017 at which time the court ordered that the suit be held in abeyance until conclusion of the taxation proceedings, namely High Court Misc. Civil Application No. 1519 of 2001.
7. The deponent further reiterated the plaintiff's averment that the High Court delivered its ruling on the taxation proceedings on 6th December, 2018 thereby allowing the plaintiff's Bill of Costs in the sum of Kshs.6,270,542.40/ inclusive of VAT in the amount of Kshs.864,902.40/, which sum the deponent states was paid by the defendant less withholding tax via bank transfer made on 4th February, 2019.
8. In that regard, it was the deponent's contention that there is currently no suit pending since payment has already been made. The deponent went on to state that in any case, the mere fact that the plaintiff is desirous of appealing against the decision of 6th December, 2018 in no way bars him from proceeding with the current suit, hence the need to dismiss the suit for want of prosecution.
9. I have considered the contending affidavits in response to the notice to show cause. I am able to confirm from the record that the present claim originated from an advocate-client relationship between the parties.
10. The record shows that when the file was before court on 29th September, 2017 none of the parties was in attendance and no orders were issued.
11. Going by the record, it is apparent that prior to bringing the suit, the plaintiff filed an advocate-client Bill of Costs dated 20th December, 2001 vide High Court Misc. Civil Application No. 1519 of 2001 and later opted to file the suit during the subsistence of the taxation proceedings.
12. It is not disputed that the taxation proceedings were only recently concluded on 15th February, 2017. It is equally not controverted that

the parties filed references to challenge the ruling on taxation, which references were heard and determined on 6th December, 2018 with the court taxing the advocate-client Bill of Costs at Kshs.6,270,542.40/.

13. I have also looked at copies of the letter dated 18th February, 2019 from the plaintiff's erstwhile advocates and a receipt evidencing payment of Kshs.5,675,922/ being the taxed costs. The defendant has also annexed to the affidavit of *Victor Muthuri* a copy of the letter dated 12th January, 2019 originating from the plaintiff's former advocates claiming interest on the taxed amount. There is no indication that the defendant has made any payments towards the interest.

14. Be that as it may, I noted that the plaintiff previously filed a notice of appeal on 19th December, 2018 though it remains unclear whether the substantive appeal was ever filed and if so, the current status of the same.

15. Suffice it to say that I take the view that the substance of the suit is essentially dependent on the outcome of taxation, which outcome it would appear is being challenged. I also noted that there is the pending issue of interest which is yet to be determined in the suit. In the premises, I am convinced that it would not be proper to have the suit dismissed at this stage, though I admit that it is quite an old matter.

Dated, signed and delivered at **NAIROBI** this 19th day of December, 2019.

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L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant