



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL APPLICATION NO. 480 OF 2014

N.W. AMOLO

B.W. KIBANYA (practicing as Amolo & Kibanya Advocates).....APPLICANTS

-VERSUS-

SAMSON KEENGU NYAMWEYA.....RESPONDENT

RULING

1. N.W. Amolo and B.W. Kibanya (practicing as Amolo & Kibanya Advocates) the applicants herein, took out the Notice of Motion dated 12th October, 2016 in which they sought for the following orders:

- i. THAT judgment be entered for the applicants against the respondent for the sum of Kshs.4, 278,490/ with interest at 9% p.a. from 3rd June, 2014 until payment in full.
- ii. THAT a charging order be issued against the respondent's properties known as LR NO. 10261/2 (I.R. NO. 65447) and LR NO. 10261/3 (I.R. NO. 65239) off Kuwinda Road Karen Nairobi to secure payment of the taxed and certified amount.
- iii. THAT this Honourable Court be pleased to assess the costs of the application.

2. The Motion is supported by the grounds set out on its face and the facts deponed in the affidavit of the 1st applicant.

3. The 1st applicant stated in his affidavit that the applicants filed the advocate-client Bill of Costs dated 3rd June, 2014 and which Bill of Costs was taxed by the taxing master on 2nd July, 2015 at the sum of Kshs.4,278,490/ and a certificate of taxation subsequently issued on 7th July, 2016.

4. It was the 1st applicant's assertion that the certificate of taxation has neither been set aside nor altered hence there is no reason as to why judgment should not be entered in line with the taxation ruling.

5. In his replying affidavit to the Motion, the respondent averred that the applicants have failed to provide a detailed account of all monies so far paid to them by the respondent despite a previous request having been made to that effect on 30th July, 2018.

6. The respondent further averred that as far as he is aware, he has made payments to the applicants to the total sum of about Kshs.12,000,000/, therefore urging this court to direct that there be a reconciliation of accounts to determine the monies paid.

7. In rejoinder, the 1st applicant put in a further affidavit.

8. This court gave directions to the parties to file written submissions. The applicants on their part submitted that the provisions of Section 51(2) of the Advocates Act are clear that once a certificate of taxation is issued, the court has no other duty save to enter judgment as indicated in the certificate.

9. The applicants further contended that under paragraph 7 of the Advocates (Remuneration) Order, an advocate is permitted to charge interest on his or her costs at 9% p.a. hence the prayer to include interest is merited.

10. In addressing the subject of payments claimed to have been made by the respondent, it was the applicants' contention that not only is the

respondent referring to various matters in which the applicants acted for him, but that the issue of payments made did not arise in the course of taxation.

11. In response to the above, the applicants argued that this is not the appropriate forum in which to address the subject of reconciliation of accounts.

12. I have considered the grounds laid out on the face of the Motion, the facts deponed in the affidavits supporting and opposing the same, and the competing submissions.

13. It is noted that the applicants through their submissions opted to abandon order (ii) of the Motion which leaves the substantive order for entry of judgment.

14. The record shows that the applicants filed the advocate-client Bill of Costs dated 3rd June, 2014 which was taxed by Deputy Registrar F.R. Wangila on 2nd July, 2015 in the sum of Kshs.4,278,490/.

15. It is also apparent from the record that a certificate of taxation was issued on 7th July, 2015.

16. Subsequently, the respondent vide his Chamber Summons Reference dated 13th June, 2018 sought to have the aforementioned decision set aside/varied/reviewed. The said Reference was heard before my colleague, Hon. Justice J. Serگون and finally dismissed on 7th December, 2018. As it stands therefore, the certificate of taxation is still in place.

17. The law according to the provisions of **Section 51(2) of the Advocates Act** is well settled that a certificate of taxation is final unless set aside or varied. The court in **Owino Okeyo & Company Advocates v Fuelex Kenya Limited [2005] eKLR** reaffirmed the above position when it held the following:

“In my understanding of the provisions of Section 51 (2) of the Advocates Act, it enables an advocate to get judgment for the taxed costs...provided that his client did not dispute the fact that the advocate had been instructed (or retained) in the first instance.”

18. Also, the court in the case of **Ochieng, Onyango, Kibet & Another v Adopt a Light Limited [2007] eKLR** agreed with the foregoing in these words:

“In my view where an Advocate has fulfilled the conditions set out under Section 51(2) of the Advocates Act, the court has no discretion but an obligation to enter judgment as prayed.”

19. No dispute has been raised as to the fact that the respondent had retained the legal services of the applicants. It is similarly not controverted that the respondent participated in the taxation proceedings and though I have established that the taxation ruling was challenged, it was eventually upheld by the High Court. In the circumstances, this court has no alternative save to enter judgment in accordance with the certificate of taxation.

20. On the issue concerning the reconciliation of the accounts, it is noted that the application before me is limited to the entry of judgment pursuant to the certificate of taxation. In that case, I am of the view that this is not the proper forum for me to consider the payments made by the respondent, if any. The respondent is at liberty to move the court appropriately should he wish to address this issue.

21. The upshot is that I will allow prayer (i) of the Motion and hereby enter judgment in favour of the applicants against the respondent in the sum of Kshs.4,278,490/ with interest at 9% from 3rd June, 2014 until payment in full. . The applicants shall have the costs of the application assessed at Kshs.10,000/.

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 Applicants

..... for the Respondent