



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC. APPLICATION NO.40 OF 2019

LESINKO NJOROGE & GATHOGO ADVOCATES....APPLICANT/ADVOCATE

VERSUS

INVESCO ASSUARANCE CO. LTD.....CLIENT/RESPONDENT

RULING

1. By a Notice of Motion dated 6th June 2019 filed by the advocates Lesinko Njoroge & Gathogo against the client Invesco Insurance Co. Ltd under section 51 (2) of the Advocates Act (cap.16), the advocates seek the following orders-

a) That Kericho High Court Miscellaneous Application Nos.77, 78, 81, 82, 83 and 84 all of 2018 be consolidated with the present application.

b) Judgment be and is hereby entered in favour of Lesinko Njoroge and Gathogo Advocates against Invesco Assurance Company Ltd for the sum of Kshs.1,412,150.50.

c) That a decree be issued pursuant to the judgment in (2) above.

d) There be no order as to costs.

2. The application has grounds on the face of the Notice of Motion that the client/respondent had failed and/or neglected to make good payment of the said taxed costs, that the said taxation has not been set aside, stayed or appealed against, and that the issue of the retainer has not been contested.

3. The application is supported by an affidavit sworn on 6th June 2019 by Wilson Gathogo Advocate which amplifies the circumstances of the application.

4. Though the application was served and stamped as received by the respondent on 12th June 2019, the respondent has neither entered appearance nor filed any response.

5. On the hearing date, Mr. Botany counsel for the advocate/applicant urged the court to enter judgment as requested. Counsel referred to two High Court decisions on the matter – that is **Kisumu High Court Miscellaneous Civil Application No.84 of 2016 – Otieno Yogo & Company Advocates -vs- Kisumu Water and Sewerage Company Ltd [2018] eKLR** and **Kisumu High Court Miscellaneous Civil Application No.119 of 2017- Onsongo & Company Advocates -vs- Africa Merchant Assurance Co. Ltd [2018]eKLR**.

6. I have considered the request of the applicant firm of Advocates which is not contested. I note that the matters herein sought to be consolidated in this request for entry of judgment on taxation, arose from difference cases in the magistrate's court that is Kericho Chief Magistrate's Civil Cases Nos.301, 302, 303, 304, 305, 306 and 307 all of 2015. However, taxation was in each case done by the Deputy Registrar of the High Court under Miscellaneous Civil Cases.

7. I have taken into account that in **Kisumu High Court Miscellanoues Civil Application No.119 of 2017 Onsongo & Company Advocates –vs- Africa Merchant Assurance Company Limited** the subject taxation matter related to a Magistrate's Civil Case – **Winam SRMCC No.225 of 2009 – Patrick Anakiru Okoyo –vs- Paul Okello Ouma**. The High Court Judge still dealt with the matter and delivered a ruling.

8. However, in my view, it would be more appropriate for such applications to be dealt with in the trial court file for the record to be clear as to what steps have been taken and what consequential decisions have been made in each particular case. In my view, this is in line with the provisions of section 51 of the Advocates Act (cap.16) which provides as follows-

“51 (1) Every application for an order for the taxation of an advocate bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(2) The certificate of the taxing officer by whom any bill has been taxed shall unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

9. In my view, it is only an application that is required to be made by an advocate in the same trial court file, and the court referred to under section 51 (2) is the same trial court, not another court. As these taxations herein were done by the Deputy Registrar of this court in Miscellaneous Civil Applications, I will grant the orders sought, but order at the same time that a copy of the ruling herein be filed in all the subject magistrates court files herein.

10. Consequently, I allow the application and order as follows-

1) That Kericho Misc. Application Nos.77, 78, 79, 81, 82, 83 and 84 all of 2018 be and are hereby consolidated with this file for entry of judgment and issuance of decree.

2) Judgment be and is hereby entered in favour of Lesinko Njoroge and Gathogo Advocates against Invesco Assurance Company Limited for the sum of Kshs.1,412,150.50.

3) A decree is hereby issued pursuant to the judgment in (2) above.

4) No order as to costs.

11. I order that copy of this ruling be filed in each of Kericho Chief Magistrate’s Civil Case Nos.301, 302, 303, 304, 305, 306 and 307 all of 2015 respectively.

Dated and Delivered at Kericho this 17th December 2019.

George Dulu

JUDGE