



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

MISC. CIVIL APPLICATION NO. 135 OF 2014

IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 OF THE LAWS OF KENYA

AND

IN THE MATTER OF TAXATION OF ADVOCATE AND CLIENT BILL OF COSTS

BETWEEN

OCHIENG' ONYANGO KIBET & OHAGA ADVOCATES.....APPLICANT

AND

ANDY FORWARDERS SERVICES LIMITED.....1ST RESPONDENT

PETER MUTHOKA.....2ND RESPONDENT

ARISING FROM:

HCCC NO. 149 OF 2012

ANDY FORWARDERS SERVICES LIMITED & ANOTHER.....PLAINTIFFS

VERSUS

PRICE WATERHOUSE COOPERS LIMITED & ANOTHER...DEFENDANTS

RULING

[1] Before the Court for determination is the Applicant's Notice of Motion dated **21 October 2015**. It was filed pursuant to **Section 51(2)** of the **Advocates Act, Chapter 16** of the **Laws of Kenya, Paragraph 7** of the **Advocates (Remuneration) Order** and **Order 50 Rule 1** of the **Civil Procedure Rules, 2010**. The orders sought by the Applicant are that Judgment be entered for the Applicant as against the Respondents jointly and severally for the sum of **Kshs. 3,975,851.06**, being certified costs due to the Applicant; and that the Respondents do pay the Applicant interest on the certified costs at 14% per annum from **13 August 2015** being the date of taxation until payment in full.

[2] The application was premised on the grounds that the Advocate/Client Costs due to the Applicant herein were taxed in the sum of **Kshs. 3,975,851.06** on **13 August 2015**; and that there is no dispute that the Respondents retained the Applicant as Advocates in respect of which retainer, an Advocate-Client relationship existed. It was thus the contention of the Applicant that it is only fair and just in the circumstances that Judgment be entered for the sum certified as due to the Applicant. These grounds were deposed to in the Supporting Affidavit of **James Ochieng' Oduol**, sworn on **21 October 2015**, to which was annexed the Certificate of Costs dated **13 August 2015**.

[3] The application was opposed by the Respondents, and their Grounds of Opposition were that, in the light of the Settlement Agreement dated **7 February 2013** by which **HCCC No. 149 of 2012** was compromised, it could not be said that there was any retainer of the Applicants by the Respondents within the meaning of **Section 51(2)** of the **Advocates Act**; and therefore the Applicant's remedy, if any, lies in filing a suit for the recovery of the certified costs. It was further the contention of the Respondents that, being dissatisfied with the Ruling/Order of the Court dated **22 September 2017**, they have filed a Notice of Appeal dated **26 September 2017**, with a view of appealing

that decision. Thus, it was posited that the intended appeal will be rendered nugatory should the instant application be allowed.

[4] I have carefully considered the application, the averments in the Supporting Affidavit, the Grounds of Opposition relied on by the Respondents as well as the submissions made by Learned Counsel for the parties. I have also perused the record of the proceedings herein. The record confirms that on the **2 April 2014**, the Applicant filed a Bill of Costs for taxation in connection with **HCCC No. 149 of 2012: Andy Forwarders Service Limited and Peter Muthoka vs. Price Waterhouse Coopers and 4 Others.** The Bill of Costs, which was for a total sum of **Kshs. 91,214,851.06**, was thereafter taxed by the Deputy Registrar and allowed in the sum of **Kshs. 3,975,851.06** only, and a Certificate of Costs accordingly issued dated **13 August 2015**. In the premises, under **Section 51(2) of the Advocates Act**, the Applicant would be entitled to Judgment in terms of the Certificate of Costs, for that provision stipulates that:

“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.”

[5] The record confirms that although the decision of the Taxing Master was challenged by way of a Reference, that decision was confirmed; and whereas it was the contention of the Respondents that there was a dispute as to the retainer, the record shows otherwise. According to the record, it is not in dispute that the Applicant was indeed instructed to act for the Respondents. What has been in contention; and which was urged before the Court in connection with the Reference, was the question of quantum, on the ground that the subject suit was compromised vide a Deed of Settlement. The Court gave attention to the issue at pages 26 and 27 of the Ruling dated **22 September 2017** and upheld the taxation by the Deputy Registrar. Thus, a decision having been taken on the Reference, there is absolutely no reason why Judgment should not be entered in the Applicant's favour on the basis of the Certificate of Costs; not even the fact that a Notice of Appeal has been filed, for it has not been alleged that the Applicant will not be in a position to disgorge the monies, should the appeal succeed.

[6] In the premises, the Applicant's application dated **21 October 2015** is hereby allowed and Judgment entered in the Applicant's favour in the sum of **Kshs. 3,975,851.06** together with interest at 14% per annum from **13 August 2015** till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH APRIL 2018

OLGA SEWE

JUDGE