



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL MISC. APPL. NO. 426 OF 2016**

**NJUGUNA & PARTNERS ADVOCATES.....APPLICANT**

**V E R S U S**

**BABS SECURITY SERVICES LTD.....CLIENT/RESPONDENT**

**RULING**

1) Njuguna & Partners Advocates, the applicant herein, filed an advocate-client Bill of Costs dated 18<sup>th</sup> August 2016 against Babs Security Services Ltd, the respondent herein. The Bill of Costs proceeded for hearing exparte when the client/respondent failed to turn up.

2) Miss Mubangi, learned advocate appearing for the applicant urged Hon. Sitati, learned Taxing Officer to tax the Bill of Costs as drawn. The learned Taxing Officer having perused the Bill of Costs noted that the applicant and the respondent had executed a written agreement dated 20.1.2015 over the advocates fees. The Bill of Costs was found to have been filed contrary to Section 45(5) of the Advocates Act. Consequently, the learned Taxing Officer proceeded to dismiss the Bill of Costs for being untenable. The applicant was aggrieved hence he preferred a reference vide the chamber summons dated 29<sup>th</sup> September 2017.

3) In the aforesaid summons the applicant sought for the following orders

- 1. The decision of the Taxing Officer delivered on 2<sup>nd</sup> August 2017 on the bill of costs dated 18<sup>th</sup> August, 2016 be set aside.***
- 2. The bill be remitted for taxation afresh with appropriate directions.***
- 3. The costs of this application be provided for.***

4) The summons is supported by the affidavit of Jane Mubangi.

The applicant was served but the same did not elicit any response from the respondent therefore the same proceeded for hearing exparte.

5) It is the submission of Miss Mubangi that the learned Taxing Officer erred in law and in principle by failing to appreciate that the fee agreement between the parties herein in light of Section 45 of the Advocates Act as read as a whole. She pointed out that the Taxing Officer failed to appreciate the fact that an advocate who is a party to a retainer agreement and who has acted diligently for the client is entitled to sue and recover his fees should the client default in payment thereof. Miss Mubangi pointed out that the Taxing Officer misinterpreted Section 45(6) of the Advocates Act.

6) I have considered the grounds stated on the face of the summons and the facts deponed in the supporting affidavit. I have also taken into account the oral submission of the learned counsel. It is not in dispute that the learned Taxing Officer dismissed the bill of Costs on the basis that the same is untenable under Section 45(6) of the Advocates Act. The provisions of Section 45(6) provides as follows:

**“Subject to this section, the costs of an advocate in any case where an agreement has been made, by virtue of this section shall not be subject to taxation nor to section 48.”**

7) It is apparent from the above provision that where an advocate has a written agreement over his fees like in this case, his costs cannot be subjected to taxation. The matter which was placed before the Taxing Officer is a Bill of Costs in which the Taxing Officer has been invited to assess the advocate's costs on various items identified in the bill. That is contrary to the express provisions of Section 45(6) of the Advocates Act. The learned Taxing Officer was therefore right not to entertain the bill. The only error the learned Taxing Officer did is to dismiss the Bill of Costs. The correct order should have been to strike out the bill.

8) In the end, the order dismissing the Bill of Costs dated 18<sup>th</sup> August 2016 is set aside and is substituted with an order striking out the

summons for being incompetently before the court.

9) A fair order on costs is to order which I hereby do that each party to meet its own costs.

Dated, Signed and Delivered in open court this 25<sup>th</sup> day of May, 2018.

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Applicant

..... for the Respondent