



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPL. NO. 21 OF 2010

GITONGA MUREITHI & COMPANY ADVOCATES.....APPLICANT

V E R S U S

KOINANGE INVESTMENT & DEVELOPMENT LTD.....RESPONDENT

RULING

1) **Gitonga Mureithi & Co. Advocates**, the advocate/applicant herein, took out the motion dated 28.8.2017 in which he sought for the following orders:

1) THAT judgment be entered against the respondent in the sum of ksh.8,405,718.00 as per the certificate of taxation dated 29th June 2017.

2) THAT the judgment do attract an interest at the rate of 14% per annum from 22nd January 2010 until payment in full.

3) THAT the costs of this application be borne respondent.

2) The motion is supported by the affidavit of Stephen Gitonga.

Koinange Investment & Development Ltd, the respondent herein, filed grounds of opposition to resist the motion.

3) When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions. I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavits plus the respondent's grounds of opposition. I have also considered the rival written submissions. It is the submission of the advocate/applicant that he filed an advocate-client Bill of costs dated 22.1.2010 and a certificate of costs issued on 29/7/2017 in the sum of ksh.8,405,718/=.

4) The applicant has now beseeched this court to enter judgement in his favour and against the respondent pursuant to the provisions of Section 51(2) of the Advocates Act. The applicant averred that there is no challenge to the decision of the taxing officer of 30.5.2017 by way of a reference and set aside or in the alternative that the retainer had been disputed.

5) The respondent filed grounds of oppositions arguing that on 23.06.2017 it filed a reference i.e **Miscellaneous no. 250 of 2017** seeking for the decision of the taxing master of 30.5.2017 to be set aside and for the Bill of Costs to be taxed before a different taxing master. The respondent contested the applicant's assertion that there was no reference filed against the decision of the taxing officer.

6) In response to the respondent's assertion that it has challenged the decision of the taxing officer, the applicant argued that the respondent elected not to file a reference in the same matter but instead filed a new matter altogether and since the matter is not before this court by way of a valid challenge envisaged under Section 51 of the Advocates Act. This court was urged to proceed and enter judgement as prayed.

7) Having considered the rival submissions, it is clear in my mind that the advocate/applicant does not dispute the respondent's assertion that an application has been filed to challenge the decision of the taxing officer vide Misc. Application nio. 250 of 2017. It would appear from the applicant's submission that the applicant is merely questioning the method the respondent has used to challenge the taxing officer's decision. It was pointed out that the respondent should have challenged the decision through the same file instead of instituting a totally new matter altogether. With respect, the applicant's argument goes against the provisions of Rule 11 of the Advocates Remuneration Order which expressly states as follows:

“When a party is aggrieved by the decision of a taxing officer, he is required to object in writing by requesting the taxing officer to give reasons for the items of taxation that he is objecting to and thereafter file a reference to this court.”

8) The respondent has stated that it filed an application to challenge the taxed advocate-client costs pursuant to the above provisions. The advocate-applicant has not controverted this assertion nor does he challenge the competency of the respondent's application.

9) I am convinced by the respondent's argument that it has challenged the decision of the taxing officer who awarded the advocate/applicant a sum of ksh.8,405,718/=. A fair order in the circumstances is to stay which I hereby direct further proceedings/determination of the advocate/application dated 28.8.2017 pending the outcome of respondent's Misc. Application no. 250 of 2017 dated 23.6.2017. Each party to bear its own costs of these proceedings.

Dated, Signed and Delivered in open court this 18th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent