



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS APPLICATION NO. 231 OF 2014 CONSOLIDATED WITH MOMBASA HIGH COURT MISCELLANEOUS APPLICATION NO. 242 OF 2014

V. CHOKAA & CO. ADVOCATES APPLICANT

VERSUS

COUNTY GOVERNMENT OF MOMBASA as the successor of the

MUNICIPAL COUNCIL OF MOMBASA RESPONDENT

RULING

1. Mombasa High Court Miscellaneous Application No. 231 of 2014 was consolidated with Mombasa High Court Miscellaneous Application No. 242 of 2014 on 6th February, 2018, with the lead file being Mombasa High Court Miscellaneous Application No. 231 of 2014. The two applications are dated 23rd January, 2017
2. Ms. Kimuli, Learned Counsel for the applicant submitted that in Mombasa High Court Miscellaneous Application No. 231 of 2014, the applicant sought Judgment in the sum of Kshs. 272,542.00 and in Mombasa High Court Miscellaneous Application No. 242 of 2014, the applicant sought orders for Judgment to be entered against the respondent in the sum of Kshs. 191,592.20 as per the certificates of taxation attached to the affidavits of Mr. Chokaa sworn on 23rd January, 2017. She also prayed for interest and costs.
3. Counsel submitted that the court is properly seized of the matters herein as the certificates of taxation have not been set aside or altered and the retainer is not disputed. She indicated that it is only in the foregoing instances that a court can be barred in entering Judgment in the taxed sums. She stated that Section 51(2) of the Advocates Act provides that there is no need to file a separate case to recover costs. She relied on the case of **Lubullelah & Associates Advocates vs N.K. Brothers Limited** [2014] eKLR at paragraphs 22, 27 and 28 in which Kamau J., stated that since there was no proof that the certificate of taxation was set aside and there was no case pending in court on the same issue, then the application should be allowed. Ms. Kimuli added that an Advocate should not be barred from enjoying the fruits of his labour.
4. Mr. Mwangunya, Learned Counsel for the respondent opposed the applications and relied on the grounds of opposition filed on 11th October, 2017 in respect to Mombasa High Court Miscellaneous Application No. 231 of 2014 and on 6th February, 2018 in respect to Mombasa High Court Miscellaneous Application No. 242 of 2014. He submitted that no suit had been filed to claim the costs. He relied on the case of **Cyrus Minda t/a Minda & Co. Advocates vs Yunes Kerubo Oruta**, Kisii Environment and Land Court Miscellaneous Application No. 247 of 2012 where in paragraph 3 the court held that an application became spent once the bill of costs was taxed and a certificate of taxation issued.
5. Counsel submitted that the case of **Lubullelah & Associates Advocates vs N.K. Brothers Limited** (supra) is distinguishable from the present matter. He contended that the issue of whether the previous application was spent was not canvassed in the present application. He relied on the doctrine of *stare decisis* in stating that there should be predictability in court decisions. He prayed for the applications to be dismissed.
6. In response to the submissions by Counsel for the respondent, Ms Kimuli stated that an Advocate can file an application under Section 48 of the Advocates Act or tax his bill under Section 51(2) of the said Act and there would be no need to file a suit. She stated that the authority cited by the respondent's Counsel emanates from the High Court which is a court of equal jurisdiction to this court

ANALYSIS AND DETERMINATION

7. I have perused the proceedings before the Deputy Registrar and noted that the bill of costs for Mombasa High Court Miscellaneous Application No. 231 of 2014 was by consent taxed at Kshs. 272,542.00 on 15th August, 2016. The bill of costs for Mombasa High Court Miscellaneous Application No. 242 of 2014 was taxed on 24th October, 2016 and a ruling thereof delivered on 15th December, 2016.

8. Inasmuch as Sections 48 and 49 of the Advocates Act require that a suit be filed and a decree issued before an Advocate can execute for his costs, Section 51(2) of the said Act provides 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 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 a Judgment be entered for the sum certified to be due with costs.

9. The present applications are anchored on the provisions of Section 51(2) of the Advocates Act. It is therefore my finding that the applicant has properly moved this court for entry of Judgment in the same files wherein the Deputy Registrar taxed the bills of cost. There is no dispute as to the retainer herein, no reference has been filed and none of the certificates of costs have been set aside. I am persuaded by the decision in **Lubullelah and Associates Advocates vs N.K. Brothers Ltd** (supra).

10. I am not persuaded by the authority cited by Counsel for the respondent that the applicant should have filed fresh suits to recover his costs on applications that are clearly grounded on the provisions of Section 51(2) of the Advocates Act.

11. The sum total of the foregoing is that I allow the said applications and make the following orders:-

(i) In Mombasa High Court Miscellaneous Application No. 231 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 272,542.00 with interest at 14%. Costs are awarded to the applicant; and

(ii) In Mombasa High Court Miscellaneous Application No. 242 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 191,592.20 with interest at 14%. I also award costs to the applicant.

It is so ordered.

DELIVERED, DATED and SIGNED at MOMBASA on this 14th day of June, 2018.

NJOKI MWANGI

JUDGE

In the presence of:-

No appearance for the applicant

No appearance for the respondent

Court Assistant-Bancy