



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS APPLICATION NO. 226 OF 2014 CONSOLIDATED WITH

MOMBASA HIGH COURT MISCELLANEOUS

APPLICATION NO. 238 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. 226 of 2014 was consolidated with Mombasa High Court Miscellaneous Application No. 238 of 2014 on 1st March, 2018, with the lead file being the one for Mombasa High Court Miscellaneous Application No. 226 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. 226 of 2014, the applicant sought Judgment in the sum of Kshs. 191,766.20 with interest at 14% as per the certificate of taxation dated 10th January, 2017. She also prayed for costs.

3. In Mombasa High Court Miscellaneous Application No. 238 of 2014, the applicant sought orders for Judgment to be entered against the respondent in the sum of Kshs. 231,617.60 together with interest at 14% per annum and costs. She relied on the certificate of taxation dated 10th January, 2016 (sic) attached to the applicant's supporting affidavit sworn on 23rd January, 2017.

4. Counsel submitted that the applicant is at liberty to recover her costs under Sections 48 or 51(2) of the Advocates Act. She stated that the applicant chose to file a bill of costs and a certificate of taxation was issued. It was submitted that there is no dispute on retainer or a reference filed and that the certificates of taxation have not been set aside. She relied on the case of **Gachiri Kariuki & Co Advocates vs Invesco Assurance Co. Ltd** [2014] eKLR. She also relied on **Lubullelah & Associates Advocates vs N.K. Brothers Limited** [2014] eKLR at paragraphs 27 and 28. She indicated that there is no provision that states that an applicant must have instituted a fresh suit in seeking Judgment on costs and therefore the application was properly before the court.

5. Mr. Mwangunya, Learned Counsel for the respondent opposed the applications and relied on their grounds of opposition. In his view, there was no legal basis for applications of this nature to be made in the same cause where taxation was filed. He cited 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 Judge Okong'o held that applications for taxation of costs become spent after taxation. Counsel stated that the present application should not have been filed in the same file as the application for taxation.

6. Counsel further submitted that the provisions of Section 51(2) of the Advocates Act relate to issues of taxation and do not relate to an application of this nature as the issue herein is about obtaining the final decree. He urged the court to consider the doctrine of *stare decisis* for certainty, predictability, reliability, equality which are major factors in the rule of law. He prayed for the applications to be dismissed.

ANALYSIS AND DETERMINATION

7. I have perused the proceedings before the Deputy Registrar and noted that the bills of costs were taxed on 24th October, 2016 and rulings thereof delivered on 15th December, 2016.

8. In as much 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 taxation have been set aside. I am persuaded by the decisions in **Gachiri Kariuki and Company Advocates vs Invesco Assurance Company Limited** [2014] eKLR and **Lubullelah and Associates Advocates vs N.K. Brothers Ltd.** [2014] eKLR.

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. 226 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 191,766.20 with interest at 14%. Costs are awarded to the applicant; and

(ii) In Mombasa High Court Miscellaneous Application No. 238 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 231,617.60 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