

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANEOUS APPLICATION NO. 199 OF 2016

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

AND

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT

BETWEEN

MAKUMI, MWANGI, WANG'ONDU & COMPANY.....ADVOCATES

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....CLIENT

RULING

1. The advocate filed a notice of motion dated 5th September, 2017 seeking that judgment be entered in its favour as against the client for the sum of KShs. 76,219/-. In her supporting affidavit, Beth Mwangi who is an advocate with the advocates stated that the cost due to the advocates from the client for services rendered in Machakos CMCC No. 1516 of 2010 have been taxed by the court in the sum of KShs. 76,219/-. That the client has however failed to pay the advocates the taxed costs and it is in the interest of justice that the orders sought be granted.

2. By a replying affidavit filed on 26th February, 2018, Maina Njuguna who is the advocate in conduct of this matter on behalf of the client denied having been served with the bill of costs dated 16th June, 2015 giving rise to this application and that they were only served with the application herein on 7th November, 2017. It was contended that the application is misguided since the advocate ought to file a suit for recovery of the alleged sum owing.

3. Beth Mwangi filed an affidavit on 26th March, 2018 in rebuttal stating that the bill of costs was served upon the client on 1st September, 2016 and that the client was represented in the taxation process by the firm of M/s J. Mutua & Co. Advocates which firm filed grounds of opposition in response thereto.

4. I have considered the Applicant's application dated 5/9/2017 together with the rival affidavits. The Respondent has presented a copy of a bankers cheque in respect of certain matters that were before the Chief Magistrate's court while the Applicant has presented annexures showing that services had indeed been rendered by the Applicant to the Respondent and that the specific items had been disclosed in the Bill of Costs which has since been concluded. The Applicant did file a reference to this court over some items in the ruling by the Deputy Registrar and this court rendered its ruling on the 10/5/2017 where the Advocate client's Bill was taxed in the sum of Kshs. 76,219/-. If indeed the Respondent had already paid the Applicant the legal fees as alleged then the same evidence should have been availed to the court during the taxation exercise for consideration. The replying affidavit clearly shows how the fees have been incurred and which issue was considered during the taxation. The Respondent has not rebutted the allegations of the client in the replying affidavit sworn on the 22/3/2018 and hence an inference is made that the facts as presented by the Advocate are true. The Deputy Registrar has already prepared a certificate of costs in the sum of Kshs. 76,219/- and which sum has not been challenged either by way of appeal or review. Consequently, the Applicant's request for judgment in the said sum of Kshs. 76,219/- must be allowed. I find merit in the application dated 5/9/2017 and is allowed as prayed.

Dated and delivered at Machakos this 27th day of September 2018.

D. K. KEMEI

JUDGE

In the presence of:-

N/A Mwangi - for Applicant

N/A Maina - for Respondent

Josephine - Court Assistant