

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANEOUS APPLICATION NO 204 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 17th May, 2017 seeking that judgment be entered in its favour as against the client for the sum of KShs. 24,878/-. In her supporting affidavit, Beth Mwangi who is an advocate with the client's advocates stated that the cost due to the advocates from the client for services rendered in Machakos CMCC No. 1566 of 2010 have been taxed by the court in the sum of KShs. 24,878/-. 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 stated that upon conclusion of the matter, the advocate forwarded a fee note of KShs. 23,737/- dated 8th February, 2013. That the client forwarded to the advocate KShs. 285,057/- vide bankers cheque Number 1933 dated 12th March, 2013 being the final fees for the matters and all inclusive of advocate final fees for other matters in Machakos to wit Nos. 1565, 1566, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575 and 1576 all of 2010. That the advocate did not serve the client with the bill of costs giving rise to this application.

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 bill of costs dated 23rd August, 2016 is for services rendered between the year 2015 and 2016 when one of the Defendants in the primary suit sought to re-open proceedings.

4. I have considered the Applicant's application and the rival affidavits. The Respondent has annexed a bankers cheque but which does not specifically indicate the purpose for which it had been paid. The Respondent feels that it had cleared all its fees due to the Applicant. However, the Applicant has presented the evidence to the effect that the services rendered were other than those alleged by the Respondent and which were properly itemized in the Bill of Costs and duly taxed by the Deputy Registrar. The Respondent has not rebutted the Applicant's averments and therefore an inference is made that the facts as presented by the applicant in the replying affidavit by Beth Mwangi sworn on the 22/3/2018 are true. The Bill of Costs was duly served upon the Respondent and that a certain counsel namely J. Mutua had indeed filed grounds of opposition to the said Bill of Costs and this waters down the Applicant's claim that it was not served. It is also noted that upon the taxation exercise being carried out, the Deputy Registrar signed a certificate of costs dated 5/12/2016 for the sum of KShs. 24,878/-. It is further noted that to date no appeal or review has been lodged against the said sum by the Applicant. Consequently, I find merit in the Applicant's application dated 17/5/2017. The same 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