



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISC. APPLICATION NO. 36 OF 2017

NESFOOD INDUSTRIES LIMITED.....CLIENT/APPLICANT

-VERSUS-

THOMAS K'BAHATI T/A

K'BAHATI & COMPANY ADVOCATES.....ADVOCATE/RESPONDENT

ARISING FROM CIVIL SUIT NO. 247 OF 2012

ATTA (KENYA) LIMITED.....PLAINTIFF

VERSUS

NESFOOD INDUSTRIES LIMITED.....DEFENDANT

RULING

1. The issue revolving around this matter Misc application no. 35 of 2017 and Misc application no. 13 of 2017, will be resolved by the determination whether *Nesfood Industries Limited* (*Nesfood*) was a client of *Thomas K'Bahati T/a K'Bahati & Co. Advocates* (*the advocate*).

2. A client is defined in Section 2 of the Advocates Act cap 16 as follows:

“**client**” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ an advocate and any person who is or may be liable to pay to an advocate any costs.”

3. *Nesfood* filed a notice of motion dated **7th April 2017** seeking stay of taxation, not only on this matter but also on Misc. 35 of 2017 and Misc. Application no. 13 of 2017. *Nesfood* alleges that the advocate acted without its instructions. This is denied by the advocate who stated that *Nesfood* had instructed him to act, even after he moved away from the partnership of *M/s Lumumba Mumma & Kaluma Advocates*.

4. I will restrict myself in discussing the parties submissions because in my consideration of this matter and the affidavit evidence, I find that it is of utmost importance for the court to receive *viva voce* evidence from the parties and their witnesses , if any, in order to determine whether the advocate is entitled to tax the bill of costs.

5. I therefore hereby order as follows:

a. There shall be stay of taxation of the advocate/client bill of costs in this matter, in Misc application no. 35 of 2017 and Misc application no. 13 of 2017 until further orders of this court.

b. At the reading of this ruling, this court shall give a date when pre-trial will be considered in Misc application no.36 of 2017, Misc application no. 35 of 2017 and Misc application no. 13 of 2017.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of **October**, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Applicant

..... for the Respondent

MARY KASANGO

JUDGE