

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC APPL. NO. 820 OF 2013

MUEMA KITULU T/A

MUEMA KITULU & CO. ADVOCATESAPPLICANT

- V E R S U S -

JOHN BOSCO NGETA MAUNDU..... RESPONDENT

RULING

1. Pursuant to the provisions of Section 51(2) of the Advocates Act, the firm of Muema Kitulu & Co. Advocates, the advocate/ applicant took out the motion dated 11.1.2016 in which the advocate/applicant sought for an order of entry of judgment against John Bosco Ngeta Maundu, the client/respondent in the sum of ksh.636,803/= being taxed and certified costs plus interest at court rates from the date of the award until payment in full. The motion is supported by two affidavits sworn by Muema Kitulu. When served, the client too, filed two replying affidavits to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the application disposed of by written submissions.

2. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have further considered the rival written submissions. It is the submission of the advocate/ applicant that the respondent was at all material times the applicant's client and that he provided the client/respondent legal services. It is submitted that despite providing the respondent with legal services, the client/respondent failed to settle the legal fees to the advocate assessed at ksh.636,803/=. The client/ respondent opposed the motion on the basis that the advocate-client costs was taxed as stated by the advocate/ applicant but the client/respondent has filed a reference to challenge the same before this court. The client/respondent also argued that he did not start the process of paying the advocate's fees because the advocate has been withholding money initially paid to him as part payment of the decretal sum in Nairobi H.C.C.C no. 1165 of 2003. He pointed out that the actual amount the applicant withheld is kshs.721,000/=. The client proposed that at appropriate time, an order for set off may be made. The client proposed that all pending bills of costs be determined first after which the outstanding fees between the client and the advocate can be determined. The client/ respondent also claimed that he paid the advocate/applicant money various times totalling to kshs.251,080/= which amount should be deducted from the fees due to the advocate. The client respondent further argued that the prayer for interest was unjustified. The advocate/applicant further argued that the issues relating to fees to the firm of Kitulu Muema & Co. Advocates was determined by the taxing officer and the client/respondent has not challenged the decision. It is argued that reference to H. C. Misc. Application no. 1131 of 2013 has nothing to do with this matter.

3. Having considered the arguments put forward by both sides, this court takes the following view of the matter. It is not in dispute that the advocate-client bill of costs was assessed at ksh.636,803/=. It is also not in dispute that the advocate/ applicant filed a notice of objection to the taxation award. The taxing officer gave reasons but no party has so far filed a reference in this court. Therefore the taxed client/advocate bill of costs shall remain undisturbed. The client/respondent has also claimed that the advocate/applicant has withheld a sum of kshs.721,000/= being a judgment sum paid to him by a judgment debtor vide H.C.C.C. no. 1165 of 2003. The advocate/applicant does not dispute this assertion. He is of the opinion that the same is not related to this matter. It would appear from the client/respondent's submissions that an order for set off should be made in the circumstances of this case since the facts are not disputed.

4. The third issue which has been raised by the client/respondent is that he made various payments to the advocate/applicant which have not been factored by being deducted. The client has given a list of those payments. The advocate/applicant has not denied receipt of those payments but he has stated that those payments were made to different law firms. The client/ respondent reported that he made those payments to law firms in which the advocate/applicant herein was a partner and he may have benefited from those payments.

5. It is clear in my mind that the advocate-client bill of costs which was taxed at ksh.636,803/=. The aforesaid has not been challenged by way of a reference. The advocate/applicant is therefore entitled to judgment in terms of Section 51(2) of the Advocates Act. However, the client/respondent has made powerful submissions, which the advocate has not seriously contested. The client/respondent has argued that the advocate withheld a judgment sum of ksh.721,000/= paid to him which amount was payable to the client vide Nairobi H.C.C.C no. 1165 of 2003. The advocate has not denied this assertion for. The client has further stated that he made various payments to advocate totalling to ksh.251,080/= which payments were not factored in drawing up the certificate of costs.

6. In exercise of the inherent power of this court and in broad interest of justice, I am convinced that this is a matter which should be referred back to the Deputy Registrar who also doubles up as the taxing officer to consider and taken into account the client's plea for set off for the amount withheld by the advocate and to factor in the amount previously paid to the advocate and thereafter alter the certificate of costs after which the file should be presented to this court to enter judgement in terms of Section 51(2) of the Advocates Act. The aforesaid exercise to be concluded within a period of 30 days.

7. The matter to be mentioned on 4/5/2017 to confirm compliance of the above directive and to enter judgement under Section 51(2) of the Advocates Act.

Dated, Signed and Delivered in open court this 31st day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent