



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
MISC.CAUSE NO.348 OF 2015

NJUGUNA & PARTNERS ADVOCATES.....PLAINTIFF/ADVOCATE

VERSUS

EXPRESS DDB KENYA LIMITED.....RESPONDENT/CLIENT

RULING

1. The singular question to be determined in this Reference is whether or not the Taxing Master erred in treating the Instructions given to the Advocate as Debt Collection.
2. If there was an error then it would amount to an error in Principle and an interference in the Taxation of 14th September 2016 would be justified [**Steel & Petrol EA vs. Uganda Sugar Factory** [1970] EA 141 & **Joreth Limited Vs. Kigano & Associates** [2002] 1 EA 92].
3. A question that arose before the Taxing Officer, as has arisen here, is whether in addition to instructions to debt collection, the Client instructed the Advocates to institute suit for recovery. The Taxing Officer found that the instructions were in the nature of Debt collection and thereby applied the schedule of the Remuneration Order in respect to Debt Collection.
4. This Court has looked at the documents that were presented at the Taxation herein and makes some observations.
5. It is not contentious that through a written communication of 21st August 2014, the Client instructed the Advocates to collect a debt of Kshs.1,633,464.50 from Industrial & Commerce Development Corporation (ICDC). It is also not disputed that following those instructions the Advocates sent out a Demand dated 26th August 2014 to ICDC.
6. It would seem that the Demand did not yield any success. On 5th December, 2014, via an Email, the Advocates advised the Client that the only way to recover the fees would be by a Court action and also advised on the Instruction Fee and an estimate of Court fee and what was termed 'service fee'. In that email, Counsel asks the Advocates to,

“Kindly confirm so that we may proceed to prepare the necessary Pleadings”

7. There is no evidence, at least in writing, that the Client gave the confirmation. However, there is a letter of 15th July 2015 in which the Advocates state that there was a meeting held on 26th January 2015 between an Advocate from the firm and the Client in which instructions fee was agreed at Kshs.200,000/=

and instruction to proceed with the institution of the suit was given.

8. On the other hand the Client, in a letter of 1st July, 2015, states that on 9th January 2015 it instructed a Jane of the office of the Advocates that the Advocates should not proceed any further in the matter “owing to the delay of over 6 months”.

9. That is the assertion and denial.

10. Of crucial importance, it seems, is that the Advocates had sent a fees Agreement in respect to the ICDC matter. In an email of 26th March 2015 to the client, the Advocates states,

“In this matter we forwarded the fee Agreement and Complaint for your execution to enable us proceed with filing. We are yet to receive the said documents”

11. That Agreement for fees was never executed, at least not by the Client.

12. The initial instructions given by the Client for Debt Collection was in writing. There is an assertion and denial that instructions were given for institution of suit. The Advocates contend that the Instructions were verbal. This is refuted by the Client. However, if the Instructions were given verbally then there was an attempt to formalize them by a written Agreement for fees. That Agreement was however not executed. In these circumstances, the Deputy Registrar was entitled to find that the Instructions given to the Advocates was only for Debt Collection. This Court would sympathize with the Advocates if they undertook work towards Institution of the suit without first getting a written confirmation through execution of the fees agreement that they should do so. But such is life! There is no evidence that the Client gave the Advocates Instructions to institute suit.

13. The Reference is not merited and is hereby dismissed with costs.

Dated, Signed and Delivered in Court at Nairobi this 18th day of May,2017.

F. TUIYOTT

JUDGE

PRESENT;

Mubangi h/b Njuguna for Applicant

Wambui h/b Mukui for Respondent

Alex - Court Clerk