

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL SUIT NO. 179 OF 2013

K'OPOT & COMPANY ADVOCATESADVOCATE/APPLICANT

VERSUS

WALTER EDWIN OMINDECLIENT/RESPONDENT

RULING

Before me is the Notice of Motion dated 29th March 2016 in which the Advocate/Applicant seeks judgment and decree for taxed costs in the sum of Kshs.103,535/80 and the costs of the application. He has to that application annexed a certificate of costs duly signed by the Deputy Registrar on 16th March, 2016.

The Client/Respondent has however opposed the application on the grounds that there was no retainer, that the Advocate has filed many frivolous bills against him and that this claim is time barred as the mother suit was completed over ten years ago.

This Court heard the Advocates for the parties on 12th April 2017. I have considered the submissions and the grounds for and against the application carefully. The application has merit. The Client has not attached anything to demonstrate that the mother suit was completed over ten years ago and that therefore the Advocate's claim is statute barred. Neither has he revealed the many other frivolous bills that the Advocate has filed against him. It is not enough to allege as he who alleges must prove. To the contrary it is my finding that by his own "affidavit" sworn on 24th January 2014 in support of an earlier application in this very suit the Client admitted the retainer by stating:-

".....Item 1 Instructions fees is charged once for all the advocates who come on record in a matter in the instant case, the advocate only filed the suit and nothing more. The suit was seeking simple injunctive prayers.

There is no decree annexed and no figure was being pursued. The item will attract 28,000/= as a just amount the advocate will be entitled to on instructions fees.....

6. All the disbursements were paid for by the Client/Respondent and the same cannot be claimed by the advocate. Therefore items 1 & 2 of the disbursements should be disallowed"

Secondly there is a Certificate of Costs duly signed which has not been set aside by this court. The application is therefore allowed and judgment entered for the Advocate/Applicant against the Client/Respondent for Kshs.103,535/80 and costs of the application. It is so ordered.

E. N. MAINA

JUDGE

Signed, dated and delivered this 3rd day of August 2017

In the presence of:-

Mr. Mirembe for Nyamweya for Respondent

N/A for K'Opot for Applicant

Evon – Court Assistant