

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC APPL. NO. 359 OF 2015

GEORGE MIYARE t/a

MIYARE & COMPANY ADVOCATES.....ADVOCATE

- V E R S U S -

TALANTA AFRICA MEDIA & TELECOMMUNICATIONS LTD.....CLIENT

RULING

1) The subject matter of this ruling are two applications. The first application is the motion dated 15th February 2016 in which Talanta Africa Media and Telecommunications Ltd, hereinafter referred to as the client, sought for inter-alia the setting aside of the decision of the Taxing Officer assessing the Advocate-client Bill of Costs at ksh.11,685/= on 10.02.2016. When served with the motion, George Miyare t/a Miyare & Co. Advocates filed a replying affidavit he swore to oppose the client's application. The second application is the motion dated 3rd May 2017 taken out by the advocate in which he sought for entry of judgment in his favour in the sum of kshs.115,686 as per the certificate of costs. The aforesaid motion was served but the client did not deem it fit to respond. When the two applications came up for interpartes hearing this court directed parties to file written submissions. At the time of writing this ruling, the client had not filed any submissions.

2) It is appropriate to first consider the substance of the client's motion dated 15th February 2016. I have already stated that the aforesaid motion basically seeks to have the order on taxation delivered on 10.02.2016 set aside. The background of the motion can easily be obtained from the material placed before this court. It is not in dispute that the firm of Miyare & Co. Advocates was instructed by the client to defend its interests in Nairobi C.M.C.C. no 3778 of 2015. The advocate thereafter filed his bill of costs to recover his fees from the client dated 18.08.2015. After several adjournments mostly instigated by the client, the bill of costs was eventually heard on 3rd February 2016. The same proceeded to hearing ex parte when the client failed to attend court despite having notice of the hearing date. Hon. Makungu, the learned Taxing Officer assessed the advocate's fees at kshs.115,686/=.

3) When the client learnt of the assessment of the advocate's bill of costs as aforesaid, it moved this court vide the motion dated 15th February 2016. The motion is supported by the affidavit of Geoffrey Eric Wesonga. The client seeks to have the order on taxation set aside and to be allowed to defend the bill of costs. It is the submission of the client that due to inadvertent mistake by its advocate, the date when the bill of costs fixed for hearing was not diarised hence their non-attendance. The client beseeched this court to set aside the ex parte taxation proceedings and to order and permit it to defend the bill of costs. The advocate strenuously opposed the motion arguing that the client has invoked the wrong provisions of the law. It is argued that the provisions of the Civil Procedure Rules do not apply. This court was implored to strike out the application.

4) There is no doubt that the client has brought its application under Sections 3 and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Act. With respect, I agree with the technical objection raised and argued by the advocate that when it comes to taxation proceedings, the applicable law is the Advocates Remuneration Order. The Advocates Remuneration order has an elaborate procedure for parties to apply in challenging both the substance and process of taxation. It is therefore not open to any party to opt to use other laws and procedures which the Advocates Remuneration Order did not permit. I find the motion to be incurably defective. The same is ordered struck out with costs to

the advocate.

5) Having disposed of the client's motion dated 15.1.2015, I now turn my attention to the advocate's motion dated 3rd May 2017. In the aforesaid motion, the advocate has beseeched this court to enter judgment in his favour in the sum of ksh.115,686 being the taxed costs. The motion was served and the client did not deem it fit to file any response. The advocate/applicant has stated that a certificate of taxation dated 7th March 2016 has been issued for ksh.115,686/=. This averment is not controverted. Pursuant to the provisions of Section 51(2) of the Advocates Act, Cap 16 Laws of Kenya, this court is given the power to enter judgment for the amount certified to be due with costs unless the certificate of taxation is set aside or altered by the court. There is no evidence that the certificate of taxation has been set aside or altered by any court. Consequently the motion dated 3rd May 2017 is found to be meritorious. It is allowed as prayed with costs to the advocate/applicant.

Dated, Signed and Delivered in open court this 17th day of November, 2017.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant