



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL MISC APPL. NO. 174 OF 2017
IN THE MATTER OF THE ADVOCATES ACT CAP 16

AND

IN THE MATTER OF THE ADVOCATE (REMUNERATION ORDER)

W.G. WAMBUGU & COMPANY ADVOCATES.....APPLICANT

- V E R S U S -

EMMA MUTHONI WAMBAA.....1ST RESPONDENT

WINGFRED NGANGA REGERU.....2ND RESPONDENT

CATHERINE NYANGUI REGERU3RD RESPONDENT

ESTHER WANJA REGERU4TH RESPONDENT

STEPHEN KAGECHE5TH RESPONDENT

VIRGINIA WANJIRU6TH RESPONDENT

PAULINE WANJIKU7TH RESPONDENT

DENNIS WAMBAA REGERU8TH RESPONDENT

JOSEPH KABATI REGERU9TH RESPONDENT

DANSON MUCHUGIA REGERU.....10TH RESPONDENT

PIUS WAITHAKA REGERU..... 11TH RESPONDENT

RULING

1)The firm of W. G. Wambugu & Co. Advocates, the applicant herein took out the motion dated 10.4.2017 in which it sought for an order for entry of judgment in the sum of ksh.5,000,000/= in its favour and against Emma Muthoni Wambaa, Wingfred Nganga Regeru, Catherine Nyangui Regeru, Esther Wanja Regeru, Stephen Kageche, Virginia Wanjiru, Pauline Wanjiku, Dennis Wambaa Regeru, Joseph Kabati Regeru, Danson Muchugia Regeru and Pius Waithaka Regeru being the 1st – 10th

respondents respectively as the agreed fees balance. The motion is supported by two affidavits sworn by Wanja Wambugu. When served Emma Muthoni Wambaa, the 1st respondent filed grounds to oppose the motion.

2) When the motion came up for interpartes hearing the respondents failed to appear hence the applicant was allowed to proceed exparte. Despite the application proceeding for hearing exparte, this court is enjoined to consider the responses filed by the respondents to resist the motion. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support of the application. I have also considered the grounds of opposition filed by the 1st respondent. I have further considered the oral submissions made by Mrs. Wambugu, learned advocate appearing for the applicant.

3) It is the submission of the applicant that the parties herein entered into an agreement for payment of fees on 4.11.2013 in the sum of ksh.5,000,000/= in full and final settlement of the services rendered by the applicant in **Nairobi H.C.S.C no. 2051 of 2007 in respect of the estate of Lawrence Regeru Wambaa, deceased**. A copy of the agreement annexed to the affidavit of Wanja Wambugu. In her grounds of opposition the 1st respondent claimed that the applicant merely represented Winfred Nganga Regeru, the 2nd respondent in the objection proceedings. It is also alleged that the advocate made very limited appearances in court. It is further alleged that a substantial portion of the fees was paid by the 2nd respondent to the applicant.

4) The 1st respondent also claimed that the applicant should have filed her bill of costs. In response to the grounds of opposition the applicant filed a further affidavit to controvert those grounds. The applicant pointed out that parties went into negotiations giving rise to the agreement on fees when it became evident that the applicant had filed her Bill of Costs.

5) Having considered the rival arguments, I am convinced that the averments made by the applicant under oath have not been challenged nor controverted. I am convinced the parties willingly entered into a consent on fees in the sum of ksh. 5 million. The applicant however admits that she was paid ksh.50,000/= which amount she has not given credit to the respondents. Consequently judgment should be entered as prayed but less the admitted sum i.e ksh.5,000,000-50,000=4,950,000/=.

6) A fair order on costs is to direct which I hereby do, that each party meets its own costs.

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