



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISC. APPL. NO. 109 OF 2015
IN THE MATTER OF THE ADVOCATES ACT
AND
IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER
AND
IN THE MATTER OF THE ADVOCATE/CLIENT BILL OF COSTS

KEMBI-GITURA

MUGURE THANDE

t/a KEMBI-GITURA & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

SYLVANA MPABWANAYO NTARYAMIRA.....RESPONDENT/CLIENT

JUDGMENT

What is before me is the Applicants' application dated 30th March 2015 seeking an order that judgment be entered against the Respondent in the sum of Kshs.1,020,520/= together with interest at the rate of 14% per annum with effect from 5th June 2014 until payment in full. The Applicants are advocates of the High Court of Kenya and were at all material times trading as Kembi-Gitura & Company Advocates. At all material times, the Respondent had retained the services of the Applicants to act for her in the sale of all that parcel of land known as L.R No. 27/158 Ridgeways. After the Applicants had rendered the services for which they were retained by the Respondent, a dispute arose over the legal fees that was payable by the Respondent to the Applicants for the said services. The Applicants filed their Bill of costs for taxation by the Deputy Registrar of this court. The Applicants Bill of Costs was taxed at Kshs.1,020,520/= on 18th November 2014 by E. K. Makori, Deputy Registrar and a certificate of taxation was issued on 3rd February 2015.

In the application before me, the Applicants are seeking judgment against the Respondent for the said sum of Kshs.1,020,520/= which was certified by the Deputy Registrar as due by the Respondent to the Applicants. The Applicants have contended that the Respondent did not challenge the taxation and as such the said sum of Kshs.1,020,520/= that was certified as due to the Applicants has not been varied or

set aside. The Respondent filed neither replying affidavit nor grounds of opposition in response to the application. The averment in the affidavit of Mugure Thande sworn on 30th March 2015 as concerns the relationship between the parties and the taxation of the Applicants' bill of costs at Kshs.1,020,520/= has therefore not been controverted. At the hearing of the application on 7th December 2015, the court allowed Mr. Oguttu Advocate who appeared for the Respondent to address the court although he had not filed a replying affidavit or grounds of opposition as alluded to earlier. Mr. Oguttu submitted that the Applicants' application is incompetent because the Applicants' have failed to annex a copy of the certificate of taxation to the affidavit in support of the application. Mr. Oguttu submitted that in the circumstances, there is no evidence that the Applicants' costs had been taxed by the Deputy Registrar at kshs.1,020,520/=. In response to this submission, Ms. Njoki, advocate who appeared for the Applicants submitted that failure to attach a certificate of taxation is not fatal to the application.

I have considered the Applicants' application together with the affidavit filed in support thereof. I have also considered the submissions by the respective advocates for the parties. The applicants' application has been brought under Section 51 (2) of the Advocates Act, Cap 16 Laws of Kenya which provides as follows:-

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court be final as to the amount of the costs covered thereby and the court may make such order in relation thereto as it thinks fit including in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

It is not disputed that the Applicants had acted as advocates for the Respondents in a transaction involving the sale of LR No. 27/158 Ridgeways. It is also not disputed that a dispute arose between the parties as to the amount that was payable by the Respondent to the applicants for the services rendered. It is also not disputed that the Applicants filed their Bill of costs for taxation and that the said bill was taxed at kshs.1,020,520/= on 18th November 2014 in High Court Misc. Application No. 244 of 2014 and a certificate of costs issued to the Applicants on 3rd February, 2015 in the sum of Kshs.1,020,520/=. It is not disputed that the Respondent did not challenge the taxation and as such the said sum of Kshs.1,020,520/= that was certified as due to the Applicants has not been varied or set aside. There is also no dispute that the Respondent has not paid to the Applicants the said amount or any part thereof.

The application was opposed only on a technical ground namely, that the Applicants did not annex to the affidavit in support of the application a copy of the certificate of taxation. I find no merit in this objection. I agree with the Respondent that the Applicants should have attached a copy of the certificate of taxation which is the basis of their application to the affidavit in support of the application. This omission is however not fatal to the application. The Respondent has not suffered any prejudice or injustice as a result of the omission. In any event the fact that the certificate of taxation was issued is not disputed. The amount that was certified as due is also not disputed. This court is enjoined by Article 159 (2) (d) of the Constitution of Kenya to dispense justice without undue regard to procedural technicalities.

The upshot of the foregoing is that the Respondent has no defence to the application before the court. I therefore enter judgment for the Applicants against the Respondent in the sum of Kshs.1,020,520/=. The applicants shall have interest on the judgment amount at the rate of 14% per annum from 2nd April, 2015 until payment in full. The Applicants shall also have the costs of the application herein.

Dated and Delivered at Nairobi this 20th day of May, 2016

S. OKONG'O

JUDGE

In the presence of

Ms. Wambui	for Applicants
Ms. Nyarindo	for Respondents
Kajuju	Court Assistant