



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. APPLICATION 21 OF 2014**

**KOPOT & COMPANY ADVOCATES.....ADVOCATE/APPLICANT**

**VERSUS**

**WALTER EDWIN OMINDE.....CLIENT/RESPONDENT**

**RULING**

By his application dated 1.12.2015 the advocate prays for the following orders against the respondent (client):

**(a) that the judgment be entered and decree issued against Walter Ominde, the respondent herein in accordance to the certificate of cost dated 10.11.2015 at Kisumu on 30.11.2015 by the Honourable P. W. Mbulikah being the Deputy Registrar of the High Court at Kisumu.**

The application is supported by the affidavit of **STEPHEN K'OPOT** sworn on 15.12.2015,

The said affidavit has attached annexures S.4K1 the certificate of costs for Kshs.300,628.70 dated 10.11.2015.

By his replying affidavit dated 26/4/2016, the respondent has opposed the application on several grounds. Primarily the opposition centres on the following issues:

- (a) that all the matters the advocate has acted for to be consolidated and accounts be taken**
- (b) the same offends the provisions of section 48,51 and 62A of the Advocates Act.**
- (c) that there are 2 bills namely that of Kshs.228,234 /= and 409,472,172/= and that there was no prove that he was served with the bills.**

The court has also perused the written submissions by the respondent. Respectfully the issues raised are weighty and substantive. They are issues which in my opinion ought to have been raised at the time of taxation or at least by way of a reference. If for instance the client had made payments earlier on to the advocate the same ought to have been raised at the time of taxation.

Further if the client had not been served or for that matter section 48 of Cap 16 had not been complied with, the taxing master ought to have been notified.

As it is, the certificate of costs dated 10.11.2015 has not been challenged in anyway. If this court were to be persuaded by the respondent's submissions then it would be sitting on appeal on the taxing master's certificate.

A closer perusal of the proceedings in this file clearly shows that on 26.3.2015 the court set aside an ex-parte taxation thus giving room to the respondent to have the bill taxed inter-parties.

There is no explanation as to why the respondent did not raise these issues before the Deputy Registrar nor file a reference as is envisaged.

Consequently, this court's hands are tied by the provisions of Section 51(2) of Cap.16 which states as follows:

**51. "The certificate of 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."**

In the premises the application dated 15.12.15 is allowed with costs.

**Dated, signed and delivered this 18th day of May 2016.**

**H. K. CHEMITEI**

**J U D G E**