



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
MISC. APPLICATION NO.62 OF 2010
LABAN AKULA ANZIYA T/A AMASAKHA, ANZIYA
MUNYENDO & COMPANY ADVOCATES.....APPLICANT
VERSUS
KAKAMEGA TEACHERS SACCO LTD.....RESPONDENT
R U L I N G

The Application

1. The applicant filed the Notice of Motion dated 02/12/2010 expressed to be brought under Rule 13 (1), (2) and (3) of the Advocates Remuneration Order seeking leave to tax an Advocate – Client Bill of Costs in Kakamega High Court Civil Suit No.1 of 2009. He also prays that costs be provided for.
2. The applicant states that he was given instructions to render services by the Liquidators of the respondents predecessor and that the said services have not been paid for. The applicant also contends that the respondents who took over the assets and liabilities of their predecessor – Mwalimu Centre – have refused to settle the bill. There is also an affidavit sworn by Laban Akula Anziya on 02/12/2010 in support of the application. Among the annexures to the said affidavit is a copy of the plaint in Kakamega CMCC No.1 of 2009, a letter dated 30/04/2010 from Amasakha, Anziya Munyendo & Co. Advocates to the Manager of the Respondents giving details of the fee payable to them. A copy of the Bill of Costs dated 14/10/2010 in the sum of Kshs.258604/20 is also annexed.

Response to The Application

3. The application is opposed through the replying affidavit of Peter Vuhya sworn on 26/01/2014. The deponent denies that the respondent gave any instructions to the applicant. He also states that there is no relationship between the Respondent and the party that allegedly gave instructions to the applicant but states as follows at paragraph 9 of the affidavit: “That I know of my own knowledge that the only relationship between KATECO SACCO and Mwalimu Centre SACCO, the later (sic) was an agent of the former for purposes related to rent collection of the premises of the aforesaid land, which relationship was terminated and KATECO SACCO took over the rent collection.” The deponent also avers that there is no evidence in support of the applicant’s allegation that the Liquidator of Mwalimu Sacco instructed the applicant to represent him (Liquidator) in Kakamega HCC No.1 of 2007. Incidentally a copy of the said case has been availed to the Court.

Submissions

4. After the parties agreed to canvas the application by way of written submissions, only the applicant through the firm of Akwala & Company Advocates filed his submissions. The said firm also filed a supplementary Affidavit of the applicant dated 19/11/2015 to which he (applicant) attached a copy of the liquidation order dated 03/03/2008 and also stated therein that upon liquidation, the property and any other liabilities that had not been settled by the Liquidator were handed over to the respondent herein.

5. The applicant's submissions centre around the law of agency and in particular that once appointed, an agent steps in the shoes of his principal and does not allow his interests to conflict with those of the principal. Counsel also submitted that paragraph 9 of the respondent's replying affidavit (supra) confirms that Mwalimu Centre and by extension its Liquidator had an agent-principal relationship with the respondent. Counsel prays for the orders.

Determination

6. I have now carefully considered the application as filed, the replying affidavit and the applicant's submissions. I have also carefully considered the law. I note that the provisions of the Advocates Remuneration Order 2009, and particularly Rule 13 thereof under which the application is brought are not relevant. The reason being that those provisions relate to taxation of costs by the taxing master and do not deal with matters of leave to tax the Advocate-client Bill. However, I am of the considered view that this apparent anomaly is curable under the provisions of Sections 1A and 1B of the Civil Procedure Act and also under Article 159 (2) (d) of the Constitution 2010.

7. Having said the above, I am satisfied that the applicant has made out a case for the order sought. The applicant has established that he received instructions from the respondent's agent; that he indeed rendered services as instructed and that he is entitled to costs for the same. The applicant has also established that the cause of action in HCCC No.1 of 2009 arose from issues of collection of rent as admitted by the respondent at paragraph 9 of the Replying Affidavit.

Conclusion

8. In the premises the Notice of Motion dated 02/12/2010 be and is hereby allowed in terms of prayer 2 thereof. As prayer 3 of the application is not clear in its wording the applicant shall file a fresh Bill of Costs within 7 days from the date of this ruling. The applicant shall have the costs of the application.

9. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 15th day of June 2016.

RUTH N. SITATI

J U D G E

In the presence of:

Miss Simiyu for Akwala (present) for Applicant

Mr. Fwaya (absent) for Respondent

Mr. Okoit - Court Assistant