



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MISCELLANEOUS CAUSE NO. 6 OF 2016**

**N.W. AMOLO & KIBANYA ADVOCATES.....APPLICANTS**

**- VERSUS -**

**SAMSON KEENGU NYAMWEYA.....RESPONDENT**

**RULING**

1. The matter before me is in the nature of a dispute between a client and a Law Firm.
2. The Law Firm, **AMOLO & KIBANYA ADVOCATES** had filed a Bill of Costs for taxation. The said Bill of Costs was filed in court on 19<sup>th</sup> January 2016.
3. Upon receipt of the said Bill of Costs, the client took the view that it ought not to proceed to taxation, because there had been an Agreement on the fees which the advocates would charge him for the work they did for him in the case **DUBAI BANK KENYA LIMITED Vs SAMSON KEENGU NYAMWEYA Hccc No. 300 of 2010**.
4. In the light of the alleged Agreement on fees, the client has moved this court for an order to stop the process of taxation, and ultimately to strike out the Bill of Costs.
5. The client produced a document dated 14<sup>th</sup> January 2011, which is a feenote raised by the advocates. The total fee charged in that feenote was Kshs. 265,450/-, inclusive of Kshs. 15,450/- for disbursements.
6. The second document produced by the client was a feenote dated 17<sup>th</sup> June 2013. That feenote was largely a reproduction of the earlier feenote, save that it now reflected the sum of Kshs. 100,000/- as having been paid to the advocates, as a deposit.
7. The third document exhibited by the client was a hand-written note dated 24<sup>th</sup> December 2012, which indicated that the sum of Kshs. 600,000/- had been received from the client, in respect to the case which Dubai Bank Kenya Limited had filed against him.
8. In his supporting affidavit, the client said that because the advocates had failed to disclose to the Taxing Officer about the payments he had received and also about the Fee Agreement, the Bill of Costs should be struck out.
9. The truth is that the failure by an advocate to disclose to the Taxing Officer about the quantum of fees which he had already been paid, is not a basis for striking out an Advocate/Client Bill of Costs.

10. The Taxing Officer's cardinal responsibility is to assess the fee payable by the client to the advocate.
11. Once the quantum has been settled, the advocate would be obliged to give due credit for any sums which the client had already paid.
12. However, when an advocate and his client have executed a Fee Agreement, the Taxing Officer would have no role in assessing the costs through taxation.
13. In this case, the advocates categorically deny the existence of the alleged Fee Agreement.
14. As there is a dispute about the very existence of the alleged Fee Agreement, I find that the Court would first have to establish conclusively whether or not the said Agreement exists.
15. It is a cardinal rule of Law, that the party who makes an assertion of law is required to prove it. Therefore, the client had a legal obligation to prove that there was a Fee Agreement between him and the advocates. So far, the client had not made available any document to prove the alleged Fee Agreement.
16. I also find that although the advocates admit having received Kshs. 600,000/- from the client, the said payment is said to be in relation to the other matters which the advocates were handling for and on behalf of the client herein.
17. On a *prima facie* basis, the hand-written note dated 24<sup>th</sup> December 2012 appears to relate to this case, as the case is mentioned in the note.
18. However, the advocates have made serious allegations against the client, contending that the client had;

**“Surreptitiously and criminally?.**

Inserted into the original note, the words;

**“Dubai Bank Vs Myself CN 300 of 2010?.**

19. In the light of the serious aspersions cast by the advocates, on the document which would have proved that the advocates had received Kshs. 600,000/-, in respect to this case, I hold that it is imperative that the authenticity of the note dated 24<sup>th</sup> December 2012 be established conclusively.
20. In the meantime, as I had already held, the failure by an advocate to disclose to the Taxing Officer the particulars of payments he may have received from his client, cannot be a basis for striking out the Advocate/Client Bill of Costs.
21. In the result, there is no merit in the application dated 31<sup>st</sup> March 2016. It is therefore dismissed.
22. The client will pay to the advocates, the costs of the said application.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>th</sup> day of December 2016.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of**

No appearance for the Applicants

Amolo for the Respondent

Collins Odhiambo – Court clerk.