



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. APPL. NO. 264 OF 2007

**IN THE MATTER OF: THE ADVOCATES ACT CAP 16 LAWS OF KENYA AND THE
ADVOCATES (REMUNERATION) ORDER (1997)**

AND

IN THE MATTER OF: TAXATION OF THE ADVOCATE-CLIENT BILL OF COSTS

AND

**IN THE MATTER OF: MOMBASA HCCC NO. 251 OF 2005 (FORMERLY KISUMU HCCC
NO. 12 OF 2005) JOERG STEINER –Vs- AGUSTA RUAMBA THUMBI**

BETWEEN

KIARIE KARIUKI T/A

KIARIE KARIUKI & CO. ADVOCATES APPLICANT

V E R S U S

AGUSTA RUAMBA THUMBI RESPONDENT

RULING

1. **KIARIE KARIUKI T/A KIARIE KARIUKI & CO. ADVOCATES**, the Advocate with Bill of Costs has filed Notice of Motion dated 5th March 2009 seeking to enter Judgment of Kshs. 234,375/- as taxed costs against Respondent **AGUSTA THUMBI**. The application is brought under Section 51(2) of the Advocates Act Cap 16 which provides-

“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.”

2. The Respondent was a former client of the Advocate and was represented by the Advocate in HCCC No. 251 of 2005. The Advocate taxed his costs and a Certificate of Taxation for those costs was issued by the Taxing Master of this Court on 29th May 2008.

RESPONDENT'S OPPOSITION

3. The Respondent filed a replying affidavit in opposition to the application.
4. Respondent deponed that she had not received a fee note from the Advocate; that the Certificate of Costs had not been served upon her; that the Bill of Costs was taxed without service on her; and that the Respondent had settled the Advocates fees.
5. Any objection to taxed costs can only be through application made in the procedure set out in paragraph 11 of the Advocates (Remuneration) Order. That procedure in that paragraph is as follows-

“(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

(3) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subsection (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

Any objection which does not follow that procedure is incompetent. The objection raised by the Respondent in her replying affidavit not being in compliance to the above paragraph is unsustainable and will be rejected.

6. Learned Counsel Mr. Asige for the Respondent submitted judgment cannot be entered for the advocate because the retainer is disputed. The Respondent does not state what retainer, if any was paid to the Advocate. It is important to note that the word retainer does not refer to fees paid. Retainer is defined in the Black's Law Dictionary as-

1. **A client's authorization for a lawyer to act in a case;**
2. **A fee that a client pays to a lawyer simply to be available when the client needs legal help during a specified period or on a specified matter.**
3. **A lump-sum fee paid by the client to engage a lawyer at the outset of a matter.**
4. **An advance payment of fees for work that the lawyer will perform in the future.**

A close look at that definition will reveal that the fee Respondent alleged she paid the Advocate does not fall within that definition. Again Respondent alleged to have paid the advocate fees but here was no documentary proof of such payment.

7. I reject Learned Counsel Mr. Asige's submissions in respect of Section 48(1) (2) and (3) and Section 49 of Cap 16. There are two modes of recovery of fees from a client. One such mode is as set out in Section 47 and 48. Under Section 47, the Court can order an Advocate to deliver a Bill of costs “in relation to any deeds documents or papers in his possession, custody or

possession” for business not done in Court. Section 48 provides that within one (1) month of such delivery the Advocate can file a case for recovery of the amount in the Bill of Costs.

8. Section 51(2), under which the Advocate has moved under, the Court has power to enter judgment for the amount in the Certificate of Costs. This is what was stated in the case **AHMEDNASIR ABDIKADIR & CO. ADVOCATES –Vs- NATIONAL BANK OF KENYA LTD (2006)eKLR** viz-

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has the discretion to enter judgment upon a certificate of taxation which has not been set aside or altered where there is no dispute as to retainer. This, in my view, is a mode of recovery of taxed costs provided by the law, in addition to the filing of suit, where such suit would be unnecessary because, one, the certificate of taxation has not been set aside or altered and, two, there is no dispute as to retainer. Unless there is any other matter as would require ventilation in a trial, what would be the necessity of filing suit? In my view the Court would be entitled to enter judgment under Section 51(2) even where there is no suit filed. I so hold.”

That is the position in Law and which applied in this matter.

CONCLUSION

9. In conclusion judgment is hereby entered for the Advocate Applicant for Kshs. 234,375/- with interest from 29th May 2008 to payment in full and the Advocate Applicant is awarded costs of Notice of Motion dated 5th March 2009.

DATED and DELIVERED at MOMBASA this 26TH day of FEBRUARY, 2015.

MARY KASANGO

JUDGE