



**REPUBLIC OF KENYA**

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

**MISC. APP. NO.177 OF 2013**

**KOPOT & COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**WALTER EDWIN OMINDE.....RESPONDENT**

**RULING**

1. In this application dated 18/4/13 the applicant (Advocate) prays for the following reliefs:

**1) that the advocate -client bill of costs annexed hereto and dated the 2nd May 2007 be set for taxation before a deputy registrar.**

**2) The original trial file relevant to the Advocate Client Bill be made available to the taxing officer on the day of taxation.**

**3) The client do pay interest on each of the bills taxed at the statutory rate of 9% p.a. (in terms of Rule 7 of the Advocates Remuneration Order) from the date the bills. fee notes were delivered to the date of the taxation and thereafter at the court rate of 14% until settlement.**

**4) Upon the taxation of the bills as prayed above, a certificate do issue under the head of the taxing officer for the payment of the said amounts.**

**5) There being no dispute as to the fact of the existence of a retainer as between the Advocate and the client, the court/taxing officer do enter judgment for the sum certified as due to the Advocate and a decree do issue accordingly.**

**6) Costs e provided for.**

2. The application is supported by the sworn affidavit of **Stephen Kopot** dated 22/4/13. The said affidavit states the Client/Advocate relationship between him and the respondent. There is also an attached bill of cost which apparently refer to the parties as **Shelter Consult vrs Kobil Petroleum Limited**.

3. The respondent has filed a replying affidavit dated 20.2.14 in which it has not denied that he instructed the applicant but on the contrary he denied having received the bill before taxation. He further annexed an itemised account showing how much money he has paid the applicant. He argued that apart from the applicant herein he had also instructed other two advocates and it would be wrong to have the applicant herein enjoy the instruction fees alone.

4. I have perused the application together with the parties written submissions. The issues raised by the respondent are weighty and are worth consideration, namely whether the applicant has followed a proper procedure in this application and whether there was other monies already paid by the respondent.

5. Be that as it may I am unable to deal with the application herein for the simple reason that the same was dealt with by the taxing master who gave his ruling on 17/2/14. If I were to proceed with the same it would mean that both of us would be dealing with one application separately which shall be a legal absurdity. As stated above I do not want to prejudice the outcome of any reference (if any) or the process

of converting the taxed costs into judgment for now.

6. Consequently based on the simple reason that it would be almost res-judicata if I were to deal with the current application I shall proceed to decline and order the applicant to follow the right procedure as provided by Section 51 of the Act. For now I do not have any application to deal with or make any meaningful decision. This ruling shall apply to files Nos.178/13, and 179/2013 between the same parties. Cost in the cause.

**Dated, delivered at Kisumu this 14th day of May 2015**

**H. K. CHEMITEI**

**J U D G E**