

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

HCMIS. APPL. NO.118 OF 2014

K'OPOT & COMPANY ADVOCATES.....APPLICANT

VERSUS

ST. MARY'S SACRED HEART

BROTHERS & SISTERS INTERNATIONAL.....RESPONDENT

R U L I N G

1. The applicant's application dated 6/3/15 prays among others for the extension of time in which the applicant could file its reference; setting aside the Deputy Registrar's taxation dated on 8th December, 2014; referring the matter back to the Deputy Registrar with proper instruction on taxation. The application is supported by the supporting affidavit of **Patricia Aluoch Oketch**.
2. The said affidavit has annexed several items including the certificate of costs dated 22nd December, 2014 in which the Respondent was awarded Kshs.1,324,690.40 by the taxing master. There is no dispute that there was a client/advocate relationship between the applicant and respondent. The advocate did prepare the relevant pleadings and filed suit No.HCC 132/2014 which is yet to be finalised.
3. The applicant being dissatisfied with the taxing master's ruling and the reasons thereof proceeded to file the application herein.
4. The respondent has opposed the application citing several grounds and in particular that there was no notice which was formerly lodged and served and that the same to say the least lacks merit.
5. I have perused the application together with the supporting affidavit as well as the written submissions by the parties herein. What I find not in dispute and clear is that it was not the fault of the applicant to file the application and sought an extension as there was a delay on the part of the deputy registrar in delivering reasons for the figures in which he arrived at. The application for extension of time is therefore granted.
6. As to whether the matter should be referred to the deputy registrar for taxation with proper directions, I do not think there is any reasons for that as this court is empowered to do so when it deems appropriate considering the time this matter has taken. I do not think there is any sufficient reasons to refer it to the taxing master.
7. Having then arrived at the above decision, does the reasons given by the taxing master plausible? The issue which I find the parties contesting is in regard to the instruction fees otherwise the other items in my opinion are not very contentious.
8. There is sufficient concurrence that the subject suit property is worth Kshs. 45 million. This fact is admitted by both sides. Equally it is not contested that the respondent did take instructions and filed the pleadings and thereafter withdrew from acting for the applicant. The reasons by the taxing master therefore are reasonable and the computation on the overall instruction fees clear and specific. The only issue which is worth considering is whether the respondent based on how far the suit had reached is entitled to the entire instruction fees. It is admitted that the suit is still pending, meaning therefore that the

applicant would still have to instruct another lawyer.

9. Taking into consideration the circumstances obtaining herein the proper recourse for the taxing officer was to award the respondent such a reasonable sum that is almost commensurate to what he had done while taking into consideration the remaining outstanding litigation. For the above reason therefore I shall set aside the sum of Kshs.1,324.940/= as per the certificate of costs dated 22.12.2014.

10. In exercising this court's discretion I shall award the respondent the sum of Kenya shillings Five hundred thousand (Kshs.500,000/) which I believe is fair and reasonable and commensurate to the work done in taking instructions and drafting the pleadings. The remaining part of the job could then be concluded by the counsel already appointed by the applicant.

11. Each party shall bear its costs.

Dated, signed and delivered this 27th day of July 2015

H. K. CHEMITEI

J U D G E