



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO. 379 OF 2012

IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA

NJUGUNA & PARTNERS ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

- 1. CORNERSTONE SECURITY SERVICES LIMITED**
- 2. JOHN KANGOGO.....CLIENTS/RESPONDENTS**

RULING

The **Notice of Motion dated 28th January 2015** brought under **section 51(2) of the Advocates Act, Cap 16 (the Act)** seeks judgment as against the Respondents jointly and severally for Kshs. 1,258,043/-. It also seeks interest at 5% per month from 29th January 2015. It is on the grounds that -

- a. The advocate-client costs due to the Advocate were taxed at Kshs. 1,258,405/- and a certificate of taxation issued to that effect.
- b. That the Respondent requested the applicant to accept payment in instalments in consideration of which the parties entered into a fee agreement dated 5th March 2014.
- c. It was a term of the said agreement that in default of payment interest was to accrue at 5% per month and the respondents were jointly and severally liable for the debt.
- d. The Respondents defaulted in payment and as per the agreement, interest started to accrue and the amount outstanding as at the application date was Kshs. 1,258,043/-.

The 1st Respondent has not opposed the application as it did not file any papers in response. The 2nd Respondent has opposed the application by his own **replying affidavit filed on 16th June 2015**. He depones that he never instructed the Advocate to act for him but he is personally known to him as he has represented the 1st Respondent for a long period of time; that he did not agree to personally assume liabilities for the 1st Respondent arising from the proceedings; that the agreement dated 5th March 2014 was signed by him in his capacity as a Director of the 1st Respondent; that the 1st Respondent is keen on amicably settling the claim; that the Advocate fraudulently misrepresented to him to enable him sign the agreement which he would not have signed had he known that he would assume personal liability.

The Advocate has filed a further affidavit on 4th June 2015 in which he states that he personally knows the 2nd Respondent and that he personally gave instructions and made all payments for the 1st Respondent prior to taxation, correspondence which is in Court.

By writing the letters contained in the Applicant's bundle of documents acting on behalf of the 1st Respondent, the 2nd Respondent cannot then go back on his word and say he was never involved in the proceedings. In any case, if he did not want to be personally liable to pay costs he would not have agreed to sign the agreement dated 5th March 2014. Furthermore, he does not complain that the Advocate did not do any work. His complaint is that he does not want to be held personally liable for the Advocate's costs even after undertaking to pay it in instalments.

Pursuant to the provisions of Section 2 of the Advocates Act -

“Client’ includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ an advocate and any person who is or may be liable to pay an advocate any costs.”

In the case of **Uhuru Highway Development Limited V Central Bank of Kenya (2) [2002] 2 E.A. 654**, the Court of Appeal held as follows:

“Whether the plaintiffs were the counsel’s client may be discerned from a careful consideration of the correspondence on record. A careful consideration of the same is, of course, required.”

In this case, the Advocate was expressly instructed by the 2nd Respondent which instructions were in writing and which the 2nd Respondent has not denied at all. Therefore, this court should not allow him to hide behind the 1st Respondent as there is evidence to show that he actually was the client of the Advocate.

I find that there is no dispute as to retainer as there were clear instructions given to the Advocate by the 2nd Respondent. The 2nd Respondent has at no time asserted that, as at the time he gave instructions to the Advocate, he lacked the requisite power and authority to give such instructions.

As already pointed out the certificate of taxation has not been set aside or varied. There is no reason to deny the Advocate judgment upon his taxed costs.

I will therefore allow the application and enter judgment as prayed plus costs. It is so ordered.

Dated and delivered at Nairobi this 7th day of December, 2015.

A.MBOGHOLI MSAGHA

JUDGE