



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**BANKRUPTCY CASE NO. 4 OF 2010**

**JAMALDIN ABDULKARIM VARVANI .....PETITIONER**

**V E R S U S**

**DIAMOND INDUSTRIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NARODHCO (K) LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Section 9 of The Advocates Act Cap 16 defines who is qualified to practice as an Advocate. That Section provides as follows-

**“9. Subject to this Act, no person shall be qualified to act as an advocate unless-**

- (a) he has been admitted as an advocate; and**
- (b) his name is for the time being on the Roll; and**
- (c) he has in force a practicing Certificate;**

**and for the purpose of this Act a practicing certificate shall be deemed not to be in force at any time while he is suspended by virtue of Section 27 or by an order under Section 60(4).”**

2. In this case the 1<sup>st</sup> Creditor, namely Diamond Industries Ltd were previously represented by the firm of J. K. Mwalimu & Co. Advocates. The 1<sup>st</sup> Creditor, by this Court’s Ruling of 1<sup>st</sup> July 2011 in respect of 1<sup>st</sup> Creditors application dated 14<sup>th</sup> October 2010 was awarded costs of the Petition and of the application.
3. A Bill of Costs dated 24<sup>th</sup> October 2011 was filed by 1<sup>st</sup> Creditor’s Advocates. That Bill was taxed on 12<sup>th</sup> April 2013 at Kshs. 60,683/-.
4. 1<sup>st</sup> Creditor obtained an order of the Court on 14<sup>th</sup> August 2013 to act in person.
5. On 6<sup>th</sup> November 2013 leave was granted to the 1<sup>st</sup> Creditor to file a reference out of time to the taxation of 12<sup>th</sup> April 2013.

6. 1<sup>st</sup> Creditor, now acting in person filed Chamber Summons dated 14<sup>th</sup> October 2013 being a reference against that taxation. I began by setting out Section 9 of Cap 16 which Section provides who can practice as an Advocate. The purpose of setting out Section 9 is because the Bill of Costs which is the subject of 1<sup>st</sup> Creditor's application relates to the remuneration of an Advocate. Cap 16 specifically forbids an Advocate to share his profits in respect of professional business with any one not being an Advocate. That Section is in the following terms-

**“37. Any Advocate who agrees to share his profits in respect of any professional business, whether contentious or non-contentious, with any person not being an advocate or other duly qualified legal practitioner (by whatever name called) shall be guilty of an offence.**

**Provided that this section shall not apply to the payment of any bonus to any of his employees by an advocate, being a bonus based or calculated on the advocate's total earnings or profits in respect of any period.”**

7. It follows that any item in the Bill of Costs which relates to attendances or legal work carried by 1<sup>st</sup> Creditor's previous Advocates cannot be shared with the 1<sup>st</sup> Creditor who now is acting in person. The only items that 1<sup>st</sup> Creditor would be entitled to receive is disbursement of the fees paid to Court, that is items 33 to 40 of the Bill of Costs.

8. The Debtor by his affidavit sworn on 17<sup>th</sup> September 2013 stated that after taxation on 12<sup>th</sup> April 2013 the taxed costs were paid in full to the 1<sup>st</sup> Creditor's then Advocate. In that paragraph the Debtor stated-

**“That further the Court records show that the Applicant (1<sup>st</sup> Creditor) was ably represented by Counsel and so there is no just reason to re-open these proceedings after the amount that was taxed has even been paid in full.”**

1<sup>st</sup> Creditor did not controvert that deposition and accordingly 1<sup>st</sup> Creditor is not entitled to even claim disbursements since the same was paid to its former Advocate.

9. It follows for the above reasons that the Chamber Summons dated 14<sup>th</sup> November 2013 is without merit and is dismissed with no orders as to costs.

**Ruling by:**

**MARY KASANGO**

**JUDGE**

**DATED and DELIVERED at MOMBASA this 27<sup>TH</sup> day of FEBRUARY, 2014.**

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**JUDGE**