



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

1. MISC. APPLICATION NO 141 OF 2013

FLORENCE NYAGUTHIE MURAGE.....CLIENT

V E R S U S

RUMBA KINUTHIA & CO., ADVCOATES.....ADVOCATE

(2) MISC. APPLICATION NO 142 OF 2013

KAMONYE MANJE.....CLIENT

VERSUS

RUMBA KINUTHIA & CO., ADVOCATES.....ADVOCATE

CONSOLIDATED RULING

1. The Clients are the erstwhile clients of the Advocate who acted for them in an action for recovery of damages. Judgment was issued in favour of the Clients and certain decretal sums were recovered by the Advocate on their behalf. Apparently there then arose differences regarding the Advocate's legal costs, and he filed in court his advocate/client bills of costs for taxation. This was vide Nairobi HC Misc. Civil Application No 508 of 2011.
2. On 30th October 2012 the Advocate's costs as against the Clients were taxed at KShs 380,076/00 each.
3. The Advocate did not pay to the Clients what was due to them even after taxation of his bills of costs. So the Clients applied in the present proceedings by notices of motion dated 18th February 2013 for judgments to be entered in favour of the Advocate for his taxed costs so that they might then be able to move to recover from him what was due to them.
4. These applications were heard and allowed on 20th May 2013 and appropriate judgments entered for the Advocate for his taxed costs. This was after the Advocate had been accorded an opportunity of about three months to file papers in response if he was so minded. In the event he did not file any grounds of opposition or replying affidavit.
5. The Advocate then filed applications by **notices of motion dated 23rd May 2013** seeking the main order that the judgments for his taxed costs entered on 20th May 2013 be reviewed and set aside. Those applications are the subject of this consolidated ruling. They are brought under **Order 45, rule 1** of the

Civil Procedure Rules (the Rules).

6. The grounds for the applications appearing on the faces thereof include -

- (i) That the Clients unlawfully applied for and obtained the decrees passed on 20th May 2013.
- (ii) That the Client is “falsely claiming for a decretal sum of KShs 1, 698,559/00 whereas the actual figure awarded by the court as general damages was KShs 1,500,000/00”.
- (iii) That the decrees for costs now in place in favour of the Advocate are “highly injurious to the (Advocate) and if executed will amount to condemning him unheard” as there were no replying affidavits by the Advocate when the applications for judgment for his taxed costs were heard.

7. There are identical supporting affidavits sworn by the Advocate. He explains in the affidavits that he failed to give instructions for the filing of replying affidavit because he had travelled out of Nairobi at the beginning of March 2013; that shortly after his return his mother passed away on 8th April 2013; that as a consequence he was out of his office until 20th May 2013; and that during the month of April and part of May 2013 he was mourning the death of his mother.

8. The Advocate has also deponed that immediately after the taxation of his costs he sought reasons for the taxation of various items in his bill of costs in order to challenge the taxation.

9. The Clients have opposed the applications by their identical replying affidavits filed on 29th April 2013. Points of objection include –

- (i) That the Advocate has refused to pay over what is due to them.
- (ii) That there was no good reason at all for the failure to file any papers in response to the applications for judgment on the Advocates’ taxed costs.
- (iii) That no references against taxation of the Advocate’s costs were filed.
- (iv) That all the Clients have been seeking is release of their monies less the Advocate’s taxed costs.

10. I heard the applications at hand on 11th March 2014. I have given due consideration to the submissions of the learned counsels appearing.

11. As already observed, the Advocate’s applications are for review of the judgments on his own taxed costs entered in his favour on 20th May 2013. The review is sought under Order 45, rule 1 of the Rules which sets out the requirements for the exercise of the court’s discretion to review. Those requirements are –

- (i) Discovery by the applicant for review of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the decree was passed or order made; or
- (ii) Some mistake or error apparent on the face of the record; or
- (iii) Any other sufficient reason.

12. The application for review must be made without unreasonable delay. In this case there was no delay at all in applying.

13. As for discovery of new and important matter or evidence, none has been pleaded by the

Advocate. He also has not pleaded any mistake or error apparent on the face of the record.

14. What the Advocate has urged in his applications is that there is another **sufficient reason** for granting the order for review sought. That sufficient reason is, that he was condemned unheard because he had not filed any papers in response to the applications for judgment upon his taxed costs. He says that the failure to file papers in response was occasioned by the fact that he was out of Nairobi, and further that his mother subsequently passed on, on 8th April 2013, and he was thus unable to give instructions regarding the preparation and filing of his papers.

15. I am not without sympathy for the Advocate for the passing on of his dear mother. But the court record discloses that on 27th February 2013 when the applications originally came up for hearing the Advocate was granted 14 days to file and serve his papers in response. When the applications came for up for hearing on 20th May 2013, **three** months later, he had not filed anything. On that date adjournment was sought but was opposed. The court delivered a ruling on the issue and refused adjournment. There has not been any appeal against that ruling/order that refused adjournment on 20th May 2013.

16. Again it is to be noted that it has not been indicated what issues the Advocate intended to bring up in opposition to the applications for judgments upon his own taxed costs. Those judgments were entered in his favour. He had not challenged the taxation as provided for in **paragraph 11** of the **Advocates (Remuneration) Order**. Not even a notice of objection to taxation has been exhibited.

17. It cannot escape the Court that the Advocate has not indicated what he thinks his costs ought to be, or what he reckons is due to the Client. He has not offered to pay the Clients what by his own calculation (if there has been any such calculation) he deems is due to them. The Clients' plea that the present applications are yet another attempt by the Advocate in his efforts to avoid paying them their dues must thus elicit some sympathy.

18. In the circumstances I find no merit in the Advocate's applications by notices of motion dated 27th May 2013. They are hereby dismissed with costs to the Clients. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF APRIL 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 4TH DAY OF APRIL 2014