



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Application 293 of 2012

MUIGAI KEMEI & ASSOCIATES, ADVOCATES.....
.....APPLICANT

V

THE ADMINSTRATORS OF THE ESTATE

OF SIMON MOKUA GICHURU.....
.....RESPONDENT

R U L I N G

1. The **advocate/client bill of costs filed on 29th May 2012** was unsigned and also not dated. On 3rd May 2013 the taxing officer dismissed the bill on account of the Advocates' non-attendance at taxation.
2. The Advocate has now applied **by notice of motion dated 3rd May 2013** for the main orders -
 - (i) That the dismissal order be set aside.
 - (ii) That the Advocate be granted leave to date and sign the bill of costs to enable it to be taxed.

3. In the supporting affidavit sworn by **Mary W. Muigai**, learned counsel for the Advocate, it is deponed that she was late only by a few minutes while she was trying to locate the taxing officer's chambers. She also explained that failure to date and sign the bill of costs was inadvertent due to an oversight.

4. The Client has opposed the application by **replying affidavit filed on 14th May 2013**. It is sworn by **Alex Inyang**, learned counsel for the Client. He deponed that on one other previous occasion, on 27th November 2012, the Advocate had failed to attend when the bill of costs first came up for taxation. Indeed the record of the court shows that on that date there was no appearance for the Advocate. But the Client's counsel was not ready to proceed as he had just been appointed and needed time to get instructions. He did not apply for dismissal of the bill of costs.

5. It is also argued in the replying affidavit that the bill of costs is irregular and incurably defective for being undated and unsigned. The same argument was repeated at hearing of the application.

6. I have considered the application in light of the submissions made. I note that the application was filed the same day the order of dismissal was made. The Advocate acted without delay.

7. The explanation for failure to attend the taxing officer, that is, that the Advocate's counsel was late only by a few minutes as she was trying to locate the taxing officer's chambers, has not been challenged.

8. The fact that the bill of costs is not dated or signed is a technicality that can be easily rectified without prejudice to the Client. The Client has not denied retainer. The bill of costs ought to be taxed in the interests of justice.

9. I will therefore allow the application. The order of dismissal of 3rd May 2013 is set aside and the bill of costs restored. The Advocate shall file a copy of the bill of costs that is dated and signed within seven (7) days of delivery of this ruling which shall then be taxed in the usual way. In default the order of dismissal of 3rd May 2013 shall be automatically restored. The Client shall have the costs of this application. Those shall be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF MAY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 31ST DAY OF MAY 2013