



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION- MILIMANI
MISC APPL NO 548 OF 2012

GICHUKI KINGARA & CO ADVOCATES.....ADVOCATE

VERSUS

TRANSFLEET EPZ LIMITED.....RESPONDENT

RULING

1. The Notice of Motion application dated 13th February 2013 and filed on 18th February 2013 was brought by the Client/Applicant under the provisions of Order 2 Rule 15 (1) (b), (c) and (d), Order 51 Rule 1 and Order 52 Rule 3 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act Cap 21 and Section 45 of the Advocates Act Cap 16. Prayer 1 was spent. The said application sought the following remaining orders:-
 - i. **Spent**
 - ii. **THAT this Honourable Court be pleased to strike out and dismiss the Bill of Costs dated 14th September 2012.**
 - iii. **THAT the costs of the application be borne by the Advocate.**
2. The Client relied on several grounds to support its application. In summary, the same were as follows:-
 - a. **THAT the Bill of Costs dated 14th September 2012 had been compromised by agreement between the Advocate and the Client.**
 - b. **THAT Section 45 (6) of the Advocates Act specifically precluded the taxation of Advocate- Client costs where there existed an agreement as to remuneration.**
 - c. **THAT the Bill of Costs was accordingly frivolous, vexatious, oppressive and an abuse of the court process.**
3. The said averments were set out in the Supporting Affidavit of James Abiam Mugoya Isabirye sworn on 13th February 2013. The said deponent was a director and shareholder of the Client. It was his evidence that the Client and Respondent entered into an agreement where it was agreed that the Client would pay the Advocate a sum of Kshs 30,000,000/= as legal fees in respect of several matters that the Respondent acted for the Client:-
 - i. **HC Misc Civil Case No 321 of 2008**

ii. **HC Misc Civil Case No 322 of 2008**

Gichuki Kingara & Co Advocates vs Kingorani Investment Limited

iii. **HC Misc Civil Case No 323 of 2008**

Gichuki Kingara & Co Advocates vs Kingorani Investment Limited

4. He also stated that the Advocate acknowledged receipt of the cheques confirming that once the same were cleared, the Advocate would not have further claims against the deponent personally or Kingorani Investment Limited and Transfleet Limited. Despite the cheques having cleared, the Advocate nonetheless filed three (3) Bills of Costs which the Client deemed as intimidation and an unjust way for the Advocate to enrich itself.
5. In its Replying Affidavit sworn by Peter Gichuki King'ara on 15th April 2013, the Advocate averred that EPZ was not a party to the purported Agreement referred to by the Respondent. The Advocate further contended that there was no contention as to the retainer and the services rendered. It argued that as the Client had refused to pay its fees, its Bill of Costs dated 14th September 2013 ought to proceed for taxation.
6. The Client and the Advocate both filed their respective submissions on 7th May 2013 and 27th May 2013 respectively. The bone of contention appears to have been whether or not there was an agreement within the meaning Section 45 of the Advocates' Act Cap 16 (laws of Kenya).
7. I found it necessary to give a brief history of the matter as aforesaid with a view to establishing whether indeed this court has jurisdiction to grant the orders sought by the Client. The Advocates' Act and The Advocates (Remuneration) Order are distinct and complete codes that govern the Advocate- Client relationships and how the advocates' fees should be paid. The intervention by the court in the affairs of advocates and their clients must therefore be strictly in accordance with the said Act and Order.
8. After a careful perusal of the submissions by the parties, I am of the view that, firstly, this court does not have jurisdiction to stay the determination of the Bills of Costs once the same were lodged, unless the same are stayed for any other lawful cause. The arguments advanced by the Client ought rightly to be before the taxing master. This court's jurisdiction can only be invoked where there is a Reference under Paragraph 11 of the Advocates (Remuneration) Order and not before the said Bills of Costs are taxed.
9. Secondly, I did note the Client's assertions that the sum of Kshs 30,000,000/= that was paid to the Advocates was in settlement of all claims. Evidently, this is not a matter that this court can determine unless it unlawfully and illegally assigns itself the duty of interrogating the items in the Bills of Costs. This is particularly pertinent as the sum of Kshs 30,000,000/= was said to have been in full and final settlement of several matters that the Advocate was handling on behalf of the Client. The taxing master is better placed to determine in which matters the said sum related to and if a wrong decision was arrived at, for the aggrieved party to come to the High Court of Kenya under a Reference as provided for under the Advocates (Remuneration) Order.
10. Thirdly, I wish to point out that this court has no jurisdiction to usurp matters that have been lodged in other divisions of the High Court of Kenya. On 29th May 2013, Mr Muindi for the Client indicated that it was not necessary for me to hear all the applications separately because the applications were the same. He proposed that the application herein be deemed to be the test case and that its orders issued herein bind the other five (5) applications, a suggestion that was vehemently opposed by Mr Ndegwa who was holding brief for Mr Mithamo for the Advocates. Mr Ndegwa urged me to consider six (6) applications that were pending between the Advocate and the Client separately as each application had raised a different legal issue.
11. At the time of writing the ruling, I found out that the five (5) other applications to wit HC Misc 508 of 2012, HC Misc 509 of 2012, HC Misc 510 of 2012, HC Misc 511 of 2012, HC Misc 512 of 2012 and HC Misc 549 of 2012 that had been alluded to by counsel for the Advocate and Client were matters that had been lodged in the Civil Division of the High Court of Kenya Milimani Law Courts.
12. Further as can be discerned from the heading of the case herein, this matter was filed in the Civil Division. Some court documents were filed under the said Division while others have been filed

- under the heading of “Commercial and Admiralty Division”.
13. Both advocates failed and/or neglected to make disclosure of this very material fact. I would clearly be exceeding my mandate as a court in the Commercial and Admiralty Division to have taken over matters from the Civil Division without any order or any justification whatsoever and more so to have made an order in this matter that would have had a binding nature on other matters in the said Civil Division of the High Court of Kenya.
 14. In view of the fact that the Deputy Registrar of the High Court of Kenya Commercial and Admiralty Division had handled this matter previously and the Advocates’ Bill of Costs dated 14th September 2012 is awaiting determination by the said Deputy Registrar, I am satisfied that I have jurisdiction to determine the application herein.
 15. For the reasons foregoing, I find that this court does not have jurisdiction to grant the orders sought by the Client. I find that the Client’s Notice of Motion application dated and filed on 13th February 2013 is not merited and in the circumstances, the same is hereby dismissed. I hereby order that each party bears its own costs of this application.
 16. Orders accordingly.

DATED and DELIVERED at NAIROBI this 30th day of August 2013

J. KAMAU

JUDGE