



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC APPLICATION NO 298 OF 2011
IN THE MATTER OF THE ADVOCATES ACT, CAP 16
(ARISING FROM
HCCC NO. 12224 OF 2004

DANIEL KARIYU MUNGAIPLAINTIFF

VERSUS

1. **EQUITY BUILDING SOCIETY**.....
2. **RAHAB MWIHAKI KAROKI.....DEFENDANTS)**

BETWEEN

**THOMAS OTIENO (t/a OTIENO K’BAHATI &
COMPANY ADVOCATES).....ADVOCATE**

AND

DANIEL KARIYU MUNGAICLIENT

RULING

1. The Advocate/Client bill of costs herein dated 1st July 2011 was taxed *inter partes*. In her ruling on taxation dated and delivered on 11th October 2012 the Taxing Officer found that there had been agreement between the parties on instruction fee at KShs 182,000/00. She therefore disallowed the Advocate’s claim on that item at KShs 886,000/00 and only allowed the agreed sum of KShs 182,000/00. Other items in the bill were taxed. The sum of KShs 1,241,653/40 was taxed off and the bill of costs allowed at the total sum of only KShs 327,900/60. A certificate of taxation in that sum was subsequently issued.

2. The Advocate subsequently applied under **section 51(2)** of the **Advocates Act, Cap 16 (the Act)** for judgment to be entered upon the taxed costs. This was by **notice of motion dated 30th October 2012**. The Client has opposed the application. I have read the supporting and opposing affidavits. I have also considered the submissions of the parties.

3. Section 51(2) of the Act provides –

“(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

4. The certificate of taxation herein has not been set aside or altered. Nor is there a dispute as to retainer. Even though the Client may have filed a notice of objection to taxation, he did not file a reference against the taxation as provided for in Paragraph 11 of the **Advocates (Remuneration) Order**. In his arguments he stated that he opposes the application for judgment because the Taxing Officer found that there had been agreement for the advocate’s fees, and that therefore there should not have been any taxation. But as already seen the Taxing Officer found that there was agreement for **instruction fee only** at KShs 182,000/00 and allowed instruction fee at that amount. The Taxing Officer was thus entitled to tax the other items in the bill of costs. In any event, whatever problems the Client may have with the taxation, which was done *inter partes*, can only be properly taken up in a reference against the taxation duly filed under Paragraph 11 of the Remuneration Order. There is not such a reference made.

5. As it is now, there is absolutely no lawful impediment to granting the Advocate’s application, and I hereby grant the same as prayed with costs. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 27TH DAY OF SEPTEMBER 2013