

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

E & L MISC.APPLICATION NO. 247 OF 2012

CYRUS MINDA T/A MINDA & CO. ADVOCATES.....APPLICANT

VERSUS

YUNES KERUBO ORUTA.....RESPONDENT

RULING

1. The applicant is an advocate of the High Court of Kenya while the respondent was at all material times the applicant's client. The respondent had instructed the applicant to act for the respondent in a civil case before the chief magistrate's court at Kisii namely, **KISII CMCC NO. 133 OF 2011, ERICK OGENDI BUNKE VS. YUNES KERUBO ORUTA** (hereinafter referred to as "**the civil case**"). The applicant attended to the said case on behalf of the respondent to conclusion. The applicant and the respondent differed on the fees payable to the applicant for the services rendered by the applicant on behalf of the respondent in the said case. As a result of this development, the applicant proceeded to file his advocate/client bill of costs in this miscellaneous application for taxation. The applicant's said bill of costs was taxed at Ksh. 111,470.00 on 22nd October, 2012 by the deputy registrar.
2. The applicant has now moved this court in the same miscellaneous application by way of a Notice Motion application brought under Order 49 Rule 2 of the Civil Procedure Rules and Rule 68 A of the Advocates (Remuneration) Order for an order that judgment be entered for the applicant against the respondent in the sum of Ksh.111, 470.00 being the applicant's taxed costs and that the court do proceed to issue a decree against the respondent. This is the application before me for determination. When the application came up for hearing on 24th September, 2013, Mr. Minda who appeared in person relied entirely on his affidavit filed in support of the application and urged the court to allow the application as prayed. The respondent was served with the application but neither respondent to the same nor appeared in court when the application came up for hearing.
3. The applicant's application is brought on the ground that the applicant's bill of costs as against the respondent was taxed at Ksh. 111, 470.00 and a certificate of costs duly issued by the deputy registrar. The applicant contended that it is necessary for judgment to be entered for the applicant in terms of the said certificate of costs before a decree can issue in his favour for execution. I have considered the applicant's application and the provisions of the law under which it has been brought. I do not think that Order 49 of the Civil Procedure Rules or Rule 68A of the Advocates Remuneration Order empowers this court to enter judgment in a miscellaneous application in favour of an advocate on the strength of a certificate of taxation. This miscellaneous application was filed by the applicant for the purposes of taxing his bill of costs as against the respondent. In my view, this miscellaneous application was spent once the applicant's bill of costs was taxed by the deputy registrar on 22nd October, 2012 and a certificate of taxation issued on 26th October, 2012. This miscellaneous application cannot be converted into a suit against the respondent in which judgment can be sought and obtained for the taxed costs. I am of the view that once the applicant's bill of costs was taxed and the payment of the taxed costs demanded from the respondent and not paid, the applicant was supposed to file a suit pursuant to the provisions of section 48 (2) of the Advocates Act, Cap. 16 Laws of Kenya for the recovery of the said costs. Once a suit is filed and there is no dispute as to any amount that may have been paid by the

respondent in reduction of such costs, the applicant would then move the court under section 51(2) of the Advocates Act, Cap. 16 Laws of Kenya for judgment to be entered in his favour on the strength of the said certificate of costs. A miscellaneous application filed for the purposes of taxation of advocate/client bill of costs is not in my view a suit for the recovery of costs within the meaning of section 48 (2) of the Advocates Act aforesaid in which judgment can be entered for the advocate. This finding finds support in the court of appeal case of, **M.G.Sharma vs. Uhuru Highway Development Ltd., Civil Appeal No. 133 of 2000(unreported)**. See also the decision of, Lenaola J. in the case of, **L.N.Ngolya & Co. Advocates vs. Jackson Muithi Kilango [2008]eKLR**.

4. Due to the foregoing, I find the applicant's application dated 22nd August, 2013 bad in law. The same is hereby struck out with no order as to costs.

Dated, signed and delivered on 11TH day of OCTOBER, 2013.

S. OKONG'O,

JUDGE

In the presence of:-

No appearance for the applicant

No appearance for the respondent

Mobisa Court Clerk.

S. OKONG'O,

JUDGE.