REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

MISCELLANEOUS CIVIL CAUSE 190 OF 2008

IN THE MATTER OF THE ADVOCATES ACT
&

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE & CLIENT

MOHAMED BULLE & COMPANY

ADVOCATES……RESPONDENT/ADVOCATE

VS

IBRAHIM NOOR HILOWLE…….…….. APPLICANT/CLIENT

RULING

1. The application before the court dated 12th July 2010 was instituted by the Applicant/Client and seeks orders that this court should restrain itself from adopting a consent letter dated 20th May 2010 entered into between the advocates for the client and the advocates for the advocate in relation to settlement of legal fees to the latter. The application, in the alternative, seeks orders of this court to vacate the consent letter.

2. The consent letter of 20th May 2010 aforesaid sough to settle the Advocate-Client Bill of Costs dated 25th February 2010 at a sum of Kshs. 1 Million payable in two installments of Kshs. 500,000/- each.

3. The application is based on grounds set out on the face of the Notice of Motion and is further supported by the affidavit of Ibrahim Noor Hilolwe, the Client, sworn on12th July 2010.

4. The Applicant's case is that it instructed the firm foMasika&Koross Advocates to represent him in the matter of taxation of the Bill of Costs but only learnt much later of the consent filed in court committing him to pay costs in the sum of Kshs. 1,000,000/-. The Plaintiff denies having given the said advocates instructions to compromise taxation of the Bill at that sum of money. He therefore seeks orders to vacate the consent, if already adopted, or for the court to decline to adopt the consent if not yet adopted.

5. Through a supplementary affidavit filed on 3rd April 2012, the Applicant states that the consent filed in court on 20th May 2010 related to a different bill of costs as the Bill of costs filed in this case was dated 25th February 2008 and filed on 16th April 2008 and not 25th February 2010 and filed on 16th February 2008. The Bill of Costs filed in this matter had therefore not been compromised as there was no valid consent letter for the same.

6. The application is opposed through a replying affidavit sworn by Mohamed Bulle Ahmed, the Advocate on 21st July 2010. In the affidavit, the Advocate states that the Client had not denied having given instructions to the firm of Masika&Koross to represent him in the taxation matter. Taxation of the matter had been adjourned on numerous occasions at the request of the Client's Advocates for the reason that they were taking instructions from the Client. The letter of 20th May 2010 was therefore forwarded to him by the Client's advocates who he argues were deemed to have ostensible authority to record the consent. The present application by the Client was therefore an abuse of the court process and should be dismissed with costs.

7. Counsel for both parties filed written submissions to buttress their positions on the application before me. These have been considered in my analysis below.

8. The issue I need to determine in this matter is whether the consent letter filed in court on 20th May 2010 should be enforced by this court or whether the Client's prayer that the same be expunged should be heeded to.

9. Both the Client and his current advocates maintain that the firm of Masika&Koross had no authority, ostensible or otherwise because the Bill sought to be compromised contains dates that differ from the Bill of Costs filed by the Advocate in the matter. The Respondent/Advocate on its part submits that no evidence was brought before the court to show that there was any limitation to the authority that the Applicant's advocate had with regard to the compromise of fees payable in this matter. The Respondent insists that the consent was drawn by the then Advocate for the Client hence should be interpreted in *contra proferentum* the client.

10. My take in this matter is that whether or not the Client had indeed given instructions to his then Advocate to agree the compromise comprised in the letter of 20th May 2010 is not a matter that this court can conclusively determine from the affidavit evidence placed before the court. This is because neither of the parties themselves have been able to provide useful evidence on the question with the Client holding the view that he had not issued instructions to that effect and the Advocate insisting that it was within the ostensible authority of the Clients advocate to compromise the fees as per the consent letter.

11. Further, it is common ground that the consent letter of 20th May 2010 filed on 14th June 2011 was never adopted by the court and should for now consist of an intention to compromise the Bill of Costs at Kshs. 1 Million subjection to crystallization of the intention into a court order upon adoption of the consent.

12. In the circumstances, and given that the consent letter has been disputed by the Client himself, I think the interests of justice lean in favour of the Bill of Costs being subjected to taxation so that the true fees payable can be determined by the Taxing Master of the Court.

13. I would therefore allow the Client/Applicant's Notice of Motion dated 12th July 2010 and direct that the Advocate-Client's Bill of Costs filed on 16th April 2008 be placed before the Taxing Officer of this Court within 30 days from today for taxation.

IT IS SO ORDERED.

DATED SIGNED and DELIVERED in Nairobi this 17th May 2012.

J. M. MUTAVA
JUDGE