



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
MISCELLANEOUS APPLICATION 187 OF 2004
IN THE MATTER OF THE ADVOCATES ACT (CAP. 18, LAWS OF KENYA)
AND
IN THE MATTER OF TAXATION OF ADVOCATE/CLIENT BILL OF COSTS
IN NAKURU CMCC NO. 1048 OF 1998
BETWEEN
WHELDON NGETICH
T/A WHELDON NGETICH & CO. ADVOCATES.....RESPONDENT
AND
COUNTY COUNCIL OF KIPSIGIS.....APPLICANT

RULING

This Ruling relates to a Chamber Summons under Section 51(2) of the Advocates Act and paragraph 11 of the Advocates Remuneration (Amendment) Order, for orders that -

- (1) there be a stay of execution for the recovery of Ksh 143,985/= and/or any other or further sum that may have been awarded to the Respondent by the Taxing Officer,
- (2) the decision of the Taxing Officer made on 17th June, 2005 and the subsequent orders be set aside.

The application was supported by the Affidavit of Joseph Kipkurui Mutai, the Clerk of the County Council of Kipsigis, sworn on 29th October 2010 and the grounds on face of the application. It was opposed by the Replying Affidavit of Wheldon Kimutai Ngetich sworn and filed on 15th November 2010, and Affidavit stating Details of Accounts Samuel K. Sitenei Deputy Clerk to the Applicant council sworn on 16th December 2010, and filed on 24th January 2011.

In addition to the Chamber Summons of 29th October 2010, the Applicant also filed a similar application by way of Notice of Motion dated 3rd June 2011 seeking the stay of execution of the sum of Ksh 143,985/= and/or any other further sum of Ksh 264,940/= that may have been awarded to the Respondent.

These applications were opposed by the Replying Affidavit of Wheldon Kimutai Ngetich sworn and filed on 9th June 2011 and another affidavit called Reply to Affidavit Stating Details of Accounts sworn by Wheldon Kimutai Ngetich sworn and filed on 13th June 2011.

To these affidavits there was filed a Further Affidavit of Samuel K. Sitenei sworn on 15th June 2011 and filed on 16th June 2011.

Not to be outdone by the counsel, Mr. Wheldon Kimutai Ngetich filed another affidavit called - **"AFFIDAVIT STATING DETAILS OF ACCOUNTS SHOWING HOW THE RESPONDENT (COUNTY COUNCIL OF KIPSIGIS) INSTRUCTED ME, THE AMOUNT IT PAID AS MY FEES! WHAT I FILED IN COURT AS ITS ADVOCATE AND HOW I HANDLED NAKURU CMCC NO. 1048 OF 1998 WHERE I PEGGED MY BILL OF COSTS DATED 17/06/2004"**.

In addition to the above Affidavit of Erastus M. Orina, Advocate entitled AFFIDAVIT OF DETAILS OF ACCOUNTS IN RESPECT OF PAYMENTS MADE TO THE APPLICANT BY THE RESPONDENT IN KERICHO H.C. MISC. APP. NO. 35 OF 2004 AND KERICHO HC. NO. APPL. NO. 69 OF 2004, and in which learned counsel depones that Nakuru H.C. Misc. Application No. 187 of 2004, has nothing to do with the said Kericho matters.

There were also willing submissions by Mr. Siele & Sigilai & Co. Advocates for the council, dated 14th July 2011 and filed on 22nd July 2011 and the Respondent's written submissions dated and filed on 7th July 2011.

I have considered the rival affidavits set out above, as well as the rival submissions. As I see it the contention is whether the Respondent Wheldon Ngetich & Co. Advocates should be paid a separate and taxed fee of Ksh 143,985/= in respect of Nakuru CMCC No. 1048 of 1998, in addition to other fees handled in Kericho, for the council. There is some serious disputes between the council and Respondent Advocate, and the situation does not lend itself to solution easily, even the clarification by the Affidavit of Erastus Orina, that he did not handle the Nakuru CMCC No. 1048 of 1998, and it was a matter handled entirely by his colleagues Wheldon Ngetich & Co. Advocates.

The dispute does seem to be that the amount was in excess of the prescribed fees in the Advocates Remuneration Order, but that it ought not to be paid at all, and that we effect the firm of Wheldon Ngetich & Co. Advocates should refund the Council some Ksh 20,000/= from the excess of some Ksh 64,000/=. This being the case, I think this is the first problem.

The second problem relates to the Taxation of the Bill of 17th June 2004 and the main objection to the taxation is that it was done ex parte. This is the easier part.

As the matter seems to be, I set aside the ex parte order of costs taxed at Shs 143,985/= and remit the file to the Taxing Officer of this court to Tax Bill on the date agreed by both counsel for the respective parties.

On the question of the other fees, I direct that the Treasurer, of County Council of Kipsigis, and M/s Orina, Wheldon Kimutai Ngetich and Sigilai, sit down in the next 90 days, and sort out the Accounts and make a Report to this court stating what is or is not owed, and the court shall make further directions.

It is so ordered.

Dated, signed and delivered at Nakuru this 29th day of June, 2012

M. J. ANYARA EMUKULE
JUDGE