



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC APP. NO. 589 OF 2009

K. O. OBAE & CO. ADVOCATES.....APPLICANT

VERSUS

WALTER ORWA MISORI.....RESPONDENT

Coram: Mwera J

Muturi for applicant

Omwanza for respondent

Njoroge, court clerk

RULING

By a notice of motion dated 18/11/10 the applicant firm of advocates cited the old Order L. rule 1, 7 of the Civil Procedure Rules and section 3A of the Civil Procedure Act in the prayer:

i) that he be granted leave to deposit sh. 168,000/= awarded to the respondent in Limuru SRMCC 232/07 until the pending taxation herein is determined.

The court was told in the grounds that the pending taxation was not about to take place soon because of the acts/omissions by the respondent to delay the same, by complaining to the police, the Law Society of Kenya etc in a manner calculated to harass and intimidate the applicant for no reason. So he wished to deposit the money in court.

Mr Obae, the advocate, swore a supporting affidavit to the effect that after the said award in Limuru court, he with the respondent could not agree on the fees payable so this cause was filed – to tax the advocate-client bill. The respondent has not cooperated in seeing to the taxation, fixed on several occasions but adjourned, seemingly – due to his acts. But then he has made reports to the police, the Law Society and the Complaints Commission against the applicant with a view to intimidate him to forego his

fees. It does not appear that the respondent filed papers in opposition to the motion as none were readily available on record. However, asked to submit only the respondent did so and then the court proceeded to determine the motion.

The respondent's position is that he was awarded sh. 168,000/= in damages at Limuru court, following a road accident claim. He got a further sh. 5,691/= (not stated for what) making a total of sh. 219 691/=. The advocate/applicant was paid that money to pass it on to the respondent. But he only paid him sh. 30,000/= holding onto sh. 179,691/= on the argument that that was awaiting taxation of the bill. With that act, the respondent lost trust in the applicant. He would rather the balance of sh. 179,691/= be deposited in his own account plus interest at commercial rates since 2008.

In this matter and the applicant having said nothing about the larger sum now claimed by the respondent as due to him, it is granted that the judgment sum of sh. 168,000/= be deposited in court in the next 14 days. The parties to list the bill of costs for taxation as soon as it is possible so that this matter comes to an end. Each side to bear its own costs.

Delivered on 10/5/11.

J. W. MWERA

JUDGE