



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
Miscellaneous Application 10 of 2009

KOPOT & CO ADVOCATE..... PALINTIFF
VERSUS
HON. PETER ODOYO DEFENDANT
(On Preliminary Objection)

RULING

In this matter, sixteen (16) bills of costs were filed by the applicant **K'opot and Co. Advocate** on 15th January 2009 and presented before the Deputy Registrar for taxation in a single cause.

The bills were taxed at the same time on the 18th June 2009 and in the end, the total cost in all the bills was assessed at Kshs. 1,546,021/=.

The ruling on the taxation was delivered on the 20th August 2009. In the ruling, the Deputy Registrar explained the reason for having the bills taxed in a single transaction. The learned Deputy Registrar noted that all the subject appeals were consolidated on 29th September 2006 when an application for stay of execution was presented for hearing before the Judge (Mwera J). The Deputy Registrar therefore found it appropriate to deal with all the bills in a single cause rather than in separate causes for each of the bills. There was no objection to this course of action. In any event, the respondent did not attend the taxation proceedings despite service of the hearing notice upon him.

The certificate of costs issued by the Deputy Registrar on the 9th November 2009 clearly specifies that the sixteen bills of costs were taxed jointly at Kshs. 1,546,021/=.

It is in the circumstances, inappropriate for the respondent to allege herein that Rule 70 of the Advocates (Remuneration) order was flouted. The rule merely provides for the filing of bills for taxation.

In any event, any objection to the mode of taxation of the bills should have been made to the taxing officer or in accordance with Rule 11 of the aforementioned Remuneration Order.

Ground three of the preliminary objection is therefore unsustainable.

Grounds two and one are also unsustainable for the reasons that follow:-

The taxation proceedings were concluded with the ruling of the Deputy Registrar on the 20th August 2009. The formal expression of the ruling was by way of the certificate of costs issued on 9th November 2009. The applicant's notice of motion dated 14th October 2009 was filed herein on the 9th December 2009.

The application seeks to have judgment entered against the respondent for the taxed costs and for the issuance of a certificate of costs for the taxed costs. With the issuance of the certificate on 9th November 2009 the second prayer of the application has been overtaken by events and is no longer tenable.

Considering that the costs were awarded on the 20th August 2009 and that the application dated 14th October 2009 was for the issuance of the certificate "**inter -alia**" and that the application was actually filed in court on 9th December 2009, it would be a misconception for the respondent to allege that the application and the supporting affidavit are premature and fatally defective.

As for Section 48 of the Advocates Act, it provides for actions for the recovery of costs. Such may be commenced by plaint after expiry of one month after the delivery of a bill of costs.

The provision would however not apply where the retainer is undisputed. Herein, the retainer is not at all disputed.

Section 51 (2) of the Advocates Act relates to the general provisions of taxation of advocates / clients bills and recovery of the costs where the retainer is not disputed. The applicant's application filed herein on 9th December 2009 is properly and lawfully made under the said

Section 51 (2).

All in all, the respondent's preliminary objection is devoid of merit in its entirety and is hereby dismissed with costs.

The applicant's application vide notice of motion dated 14th October 2009 may be fixed for hearing for determination on the merits.

Dated, signed and delivered at Kisumu this 19th day of April 2010.

J. R. KARANJA

JUDGE

JRK/ao