

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISCELLANEOUS APPLICATION 3 OF 2008

OTIENO OYOGO & COMPANY ADVOCATES.....APPLICANTS

VERSUS

GULF LUBRICANTS.....RESPONDENTS

CORAM

J. W. MWERA J.

PJO OTIENO FOR THE PLAINTIFF

KIMANGA FOR THE DEFENDANT

COURT CLERK DIANGA – INTERPRETER/ENGLISH/SWAHILI/LUO

R U L I N G

The advocate/applicant in the notice of motion dated 18th November 2008 had this prayer under section 51(2), Advocate Act.

(1)The certificate of costs herein be made a decree and judgment be entered in terms of the certificate of costs;

The affidavit supporting the motion stated that on 18th September 2008 the advocate's bill was taxed at shs.758,597/=. It has never been challenged – hence the prayer. Mr. P. J. O. Otieno swore a supporting affidavit and argued the motion.

A supplementary affidavit sworn on 6th March 2009 alluded to circumstances where Mr. P. J. O. Otieno added that there were transactions/activities that concerned him as a director of the respondent company. The company had instructed Mr. Odhiambo Owiti Advocate to act for it in some matters. The applicant firm in other matters/cases had instructions and acted, whereupon the bill of costs was taxed as said above. And that where Mr. Otieno received money as a director of the respondent company, Kisumu HCCC 2/08 was pending to take accounts. Accordingly this counsel did not see why Mr. Kimanga for the respondent was insisting that accounts be taken first before the order the applicant firm seeks. The respondent claimed that it had paid so much money, over shs.2 million, to the applicant firm and with accounts being taken first, quite probably there would be a balance due from the applicant after its taxed costs have been deducted. Mr. Kimanga insisted on this point adding that payments to Mr. P. J. Otieno, even as a director of the respondent company, involved correspondence on the applicant's letter heads and not Mr. Otieno as a director. There was argument as to whether some shs.90,000/= paid to the applicant firm was accounted for by that firm, satisfactorily. Mr. Otieno put forth payment vouchers to show that that sum was accounted for. At the end of the day it was conceded that there was no dispute as to retainer between the applicant firm and the respondent company. Instructions were given and work was done, all which gave rise to the costs in question being taxed and certified

Section 51(2), Advocates Act, under which this application was brought reads:

“51. (1).....

(2)The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

In the present case the costs were taxed and certified. There has been no challenge thereof at all. The sum taxed is thus final. Retainer is not denied. Accordingly it is ordered that judgment is hereby entered in the sum certified, with costs. If parties are feuding about accounts of any other kind, this is said to the subject in HCCC 2/08 pending.

Orders accordingly.

Delivered on 24th June 2009.

J. W MWERA

J U D G E

JWM/mk.