

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Miscellaneous Case 241 of 2008

KAMUNYORI & COMPANY ADVOCATES.....APPLICANT

VERSUS

JAMES GATHERU MATHENGE.....RESPONDENT

RULING

The Notice of Motion dated 7th July 2009 is principally brought under the provisions of section 51(2) of the advocates Act. The applicant is seeking for an order that judgment be entered against the respondent for a sum of Ksh.839,617.15/- with interest at 14% per annum from 1st March 2009 until full payment. This application is premised on the grounds that the Advocates Bill of Costs was taxed by the Deputy Registrar and a certificate of taxation was issued on 6th July 2009. The respondent was dissatisfied with the order of taxation and filed a reference which was determined by Kimaru J on 21st January 2009, in favor of the applicant.

The application is further supported by the affidavit of Mr. Kamonyori sworn on 7th July 2009. It was further argued that under section 51(2) of the Advocates Act the advocate is entitled to a judgment because he has fulfilled the three conditions set out under the law, that is the advocate is supposed to show a certificate of taxation issued by the taxing master. Secondly, the certificate has not been challenged because no appeal has been filed since the certificate was issued and the reference was determined in favor of the advocate. Thirdly, the advocate is supposed to prove that there is no dispute regarding the instructions by the client or the retainer. Counsel made reference to several decisions by this court in regard to the interpretation of the provisions of section 51(2) of the Advocates Act, which I have taken note of.

This application was opposed by counsel for the respondent on the grounds that the advocate was paid a sum about of Ksh.130,000/- on 23rd September 2008. The advocate was paid earlier a sum of Ksh.100,000/- which should be taken out of the sum taxed and certified. Counsel for the respondent further contended that no demand was made for the sum taxed and therefore the applicant cannot insist on being paid interest.

The provisions of section 51(2) of the advocates Act are as follows:-

“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.”

There is no dispute that the applicant was retained to act for the respondent and their bill of costs was taxed. The client being aggrieved by the decision of the taxing master filed a reference which was determined, no appeal has been filed.

The only point of departure is the respondent’s allegations that the applicant was paid 230,000/- but the applicant admits receipt of Ksh.130,379.20 on 23rd September 2008 and claims a balance of

Ksh.709,238.45/-. There is no affidavit by the respondent to support the averments or documents to support the fact that the applicant was paid 100,000/-. Accordingly I disregard that submission as I see no reason why the applicant should not be granted the orders sought for the taxed costs. I will allow the application and enter judgment for the applicant in the sum of Ksh.709,238.45/- with interest thereon at 12% from the date of taxation until payment in full. The applicant shall be at liberty to execute for the same.

RULING READ AND SIGNED ON 9TH OCTOBER 2009 AT NAIROBI.

M.K. KOOME

JUDGE