



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC CIV APPLI 55 OF 2005

**IN THE MATTER OF: JAPHETH ASIGGE AND SAMMY O. ANYANZWA PRACTISING AS
ASIGE KEVERENG & ANYANZWA ADVOCATES AND RECOVERY OF FUNDS
DEPOSITED**

UNDER UNDERTAKING DATED 15TH APRIL 2004

AND

IN THE MATTER OF: ORDER LII RULE 7 CIVIL PROCEDURE RULES

**AND SECTION 56 OF THE ADVOCATES ACT AND ALL OTHER ENABLING PROVISIONS
OF THE LAW**

PETER KIMATHI RIUNGU

RONALD GITOBU MWORIA

JULIUS MIGOS OGAMBAPLAINTIFFS

VERSUS

JAPHETH S. ASIGE

SAMMY O. ANYANZWA both practicing as

ASIGE KEVERENG & ANYANZWA ADVOCATES ...DEFENDANTS

RULING

By a motion dated 29th November 2007, the applicants sought for an order to direct the defendant to pay Ksh.53,180/- to the plaintiff on account of court fees. The motion is supported by the affidavit of

Julius Ogamba.

When served with the motion, the defendant filed a replying to resist the same. It is the submission of Mr. Asige that the motion is premature because the court fees is yet to be re-assessed by the Deputy Registrar.

I have perused the affidavit filed in support and against the motion. I have also perused the record. It is apparent from the record that the parties recorded a consent order on 15th March 2006, in which the court fees was to be referred to the Deputy Registrar to re-assess within 15 days. On the 9th day of March 2007, Mr. Richard Kirui, a Deputy Registrar of this court directed the registry staff to re-assess the court fees. That directive appears to have been ignored by the registry staff. The applicant has now come before this court seeking for an order directing the defendant to settle court fees in the sum of Kshs.53,180/- on the basis of a copy of a receipt attached to the affidavit of Julius Ogamba.

I have considered the oral submissions of both Miss Obura learned advocate for the applicant and Mr. Asige learned advocate for his firm of advocates. It is clear that the Deputy Registrar did not re-assess the court fees as per the consent order recorded on 15.03.2006. It would appear the Deputy Registrar directed the registry staff to re-assess the same on 9.3.2007 which directive has not been implemented. In the end I agree with the submissions of Mr. Asige that the motion is premature because the same was filed before the Deputy Registrar re-assessed the court fees. Consequently the motion is ordered struck out with costs assessed at Ksh.5,000/- to the Respondent. To avoid this matter procrastinating further I direct that the Deputy Registrar of this court do re-assess the court fees within 15 days from the date hereof. The filed be mentioned before this court on 22/4/2008.

Dated and delivered at Mombasa this 4th Day of March 2008.

J.K. SERGON

J U D G E

In open court in the presence of Miss Obura for the Applicant and Mr. Mwakireti h/b for Asige for Respondent.