

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Appli 1211 of 2007

WARUHIU, K'OWADE & NG'ANG'A ADVOCATES.....ADVOCATE

VERSUS

RUMI SINGH.....1ST RESPONDENT/CLIENT

MALKIAT SINGH2ND RESPONDENTS/CLIENT

RULING

In the Notice of Motion dated 30th August 2007 there are two prayers for my determination namely;

- (1) **That the applicant is bound by the acknowledgement and is therefore estopped from claiming from the 2nd respondent for payment of further remuneration wherefore the cause in the circumstances an abuse of process of the court.**
- (2) **The 1st respondent was not either of the plaintiffs in Nairobi HCCC No.566/99 and was not their duly appointed agent.**

It is clear that this taxation arises from Nairobi Milimani High court Civil Case No.566/99, where the respondent claims that the instructions to file the said suit was received from **Mr. Rumi Singh and Surjit Singh**. The respondent annexed an amended plaint showing that the said case was filed by **M/S Waruhiu, Kowade and Nganga** Advocates. According to the said amended plaint, the plaintiff is described as a limited liability company duly registered under the Companies Act having its registered office in Kisumu and carrying on business as a motor dealer in Kisumu and elsewhere within the Republic of Kenya. And even in the said amended plaint, there is only one plaintiff.

The present taxation is against **Surjit Singh and Malkiat Singh** who appear to be different and separate from the plaintiff in the original suit. It is also important to appreciate that the 1st respondent herein was neither a plaintiff in that suit nor a duly appointed agent of the plaintiff. The respondent claims that all instructions to file HCCC No.566/99 were from the 1st respondent on behalf of **Mr. Surjit Singh**. And in evidence the Advocates attached various correspondences exchanged with the 1st respondent.

The letter dated 11th December, 1997 addressed to **Mr. Rumi Singh** concerns Kicomi (1993) Ltd and others. The other letter attached is dated 31st December, 1997 and concerns similar parties as in the letter dated 11th December, 1997. The Advocates also attached a letter dated 17th January 1998 concerning similar parties. And having gone through the attached documents the only relation is that the said letters are addressed to the 1st respondent. There is no evidence and/or material to show that the said letters have any relation with the matter subject of this dispute.

Secondly there is no material to show the correspondences were in respect of HCCC No.566/99 subject of this taxation. Further there is no one single evidence to show that the 1st respondent engaged the Advocates in any correspondences whether by instructions or otherwise in respect of the matter subject of

the present taxation.

One thing that is clear in the above captioned letters is that the letters were written to the 1st respondent either in his capacity as a director and/or agent of **Kicomi (1993) Ltd.** The present matter does not involve any of the parties mentioned in the correspondences the Advocates intend to rely as evidence and/or demonstration of instructions given by the 1st respondent. I therefore see no evidence to show that the 1st respondent was an agent of a principal whether disclosed or otherwise. The Advocates cannot look to the 1st respondent for payment on behalf of a party described as a limited liability company in the amended plaint.

As far as the Advocates are concerned, they must look to the client who instructed them to pay their costs. According to the amended plaint, the instructing party/client is a limited liability company, therefore the submissions of **Mrs. Muriu** that the 1st respondent is misjoined into this taxation is valid and is hereby upheld.

In conclusion, it is my view that the 1st respondent has been misjoined in this cause for he was not a party to the original suit. It is also my determination that since the plaintiff in the suit subject of this taxation was a limited liability then, the taxation against the 2nd respondent is misconceived. In short the whole taxation is an attempt to abuse the court process since the proper parties are not before court.

The other issue raised by the Advocates is the issue of the fees through the acknowledgement of payment which I feel is premature since the taxation is not against the correct parties. At the opportune time the issue of whether the fees payable has been compromised would be determined. I make no finding on that issue.

Order: This cause be and is hereby struck out with no orders as to costs.

Dated and delivered at Nairobi this 7th day of April, 2008.

M. A. WARSAME

JUDGE