



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

Misc. Cause 297 of 2004

BEHAN & OKERO APPLICANT

VERSUS

FARM ENGINEERING INDUSTRIES LTD RESPONDENT

RULING

The application is made under paragraphs 7 and 13 of the Advocates Remuneration Order and all other enabling provisions of the law.

It is for orders that:-

- (a) Leave be granted to the applicant to present for taxation in this cause a bill of costs as between advocate and client for costs inclusive of interest in respect of Kisumu High Court Civil case No. 277 of 1998.**
- (b) Interest does accrue on the aggregate of costs disclosed in each bill at the rate of 9% per annum until payment full**
- (c) The respondent pays the costs taxed and certified to be due from it together with interest and the costs of this application.**

The application is made on the basic ground that the respondent instructed the applicant in Kisumu High Court Civil Case number 277 of 1998 and after its conclusion has failed and / or declined to pay the professional charges due to the applicant.

The ground is fortified by the facts contained in a supporting affidavit dated 1st November 2004 and a supplementary affidavit dated 15th July 2008 both deponed by Isaac Edwin Nicholas Okero of the applicant firm of advocates.

The respondent opposes the application on the basis of the facts contained in a replying affidavit dated 6th December 2004 deponed by Jit Bhunji of the respondent company.

Although the application was filed way back in the year 2004 it took unreasonably long to have it prosecuted.

Nonetheless, it is the applicant's contention that it had been instructed by the Respondent which was very much aware that the matter had been taken over from a previous firm of advocate and indeed signed an affidavit drawn by the applicant. To that end, Annexure marked exhibit 2 in the applicant's supplementary affidavit was referred to.

The applicant therefore urges this court to allow the application.

The respondent's contention is that there was no letter of instructions to confirm the alleged instructions to the applicant or anything to show that the respondent had acquiesced in the taking over of instructions from a previous firm of advocates. The respondent also contends that in the material High Court case No. 277 of 1998, the applicant was ordered to pay the respondent.

The respondent urged this court to dismiss the application and relied on the decision in **Milimani Misc Civil Appl No. 599 of 2001 James Chebet =vs= Savings & Loan (k) Ltd.**

In response the applicant contended that the aforementioned case is irrelevant and that the award of costs alluded to by the respondent was made to a party and not an advocate.

The applicant also contended that the respondent by its conduct showed that it had given the necessary instructions.

The issue arising for determination is essentially whether the applicant is entitled to leave to present for taxation in this cause an advocate /client bill of costs in relation to Kisumu High Court Civil Case 277 of 1998 in which the respondent was a party.

From the averments contained in the respondent's replying affidavit and the arguments advanced on its behalf during the hearing of the application it becomes apparent that the respondent's objection to the application is premised on alleged lack of instructions on the part of the applicant.

The respondent says that it did not instruct the applicant Behan & Okero Advocates but a firm known as Joginder Singh Behan and Company Advocates.

The respondent further says that if the applicant represented or acted on its behalf in the material Kisumu High Court Civil case No. 277 of 1988 then it was without its knowledge, instructions and acquiescence and may not in the circumstances be held liable for any fees due to the applicant.

However, paragraph 3 of the applicant's supplementary affidavit indicated that Joginder Singh Behan & Co is the same firm Behan & Okero.

A certificate of registration of a change of particulars annexed to the said affidavit indicates a change of particulars respecting Joginder Singh Behan & Company was effected on the 10th January 1992 and a change of name from Joginder Singh Behan & Co to Behan & Okero Advocates was effected on 1st January 2000 as per a letter to the Law Society of Kenya dated 18th January 2000 and the minutes of the said society dated 14th February 2000.

A notice of motion dated 29th November 2001 and taken out on behalf of the respondent by the applicant dispels the respondent's contention that it had not given necessary instructions to the applicant.

The affidavit in support of the said notice was deponed and signed by the respondent's own financial controller.

The letter of instructions dated 14th December 1998 from the respondent to Joginder Singh Behan & Co Advocates was converted into the applicant's favour upon change of name from Joginder Singh Behan & Co to Behan & Okero Advocates.

The notice of motion aforementioned was a clear indication of the respondent's knowledge and acquiescence of the changes.

Consequently, the respondent objection to the present application is without merit and is hereby overruled.

The application is allowed. It is ordered as prayed.

Dated, signed and delivered at Kisumu this 25th day of November 2008.

J. R. KARANJA

JUDGE

JRK/aao