



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KISUMU

Misc. 185 of 2007

RATEMO OIRA & COMPANY ADVOCATES.....APPLICANT

VERSUS

BLUE SHIELD I. COMPANY LTD RESPONDENT

RULING

The applicant is a firm of Advocates and by a notice of

motion filed herein on 17th November 2008 under Section 51 92) of the Advocates Act, Rule 7 of the Advocates Remuneration Order and Order 50 Rule 1 of the Civil Procedure Rules seeks the following orders:-

- (i) That the Advocate / client Bill of costs taxed on the 7th October 2008 and allowed as against the respondent herein in the sum of Kshs. 330,000/= be made a judgment of the Honourable Court
- (ii) That the Honourable Court do order that the said taxed costs be paid with interest pursuant to Rule 7 of the Advocates Remuneration Order.
- (iii) That the costs of this application be awarded to the Advocate / Applicant

The grounds for the application are contained in the body of the appropriate Notice of Motion and are as follows:-

- (a) That the said costs have already been taxed and certified and that the Respondent is yet to settle the same
- (b) That there is no dispute on the retainer since the Applicant was instructed and retained by the Respondent to pursue Kisumu HC Misc Appl No. 106, 107, 108, 109, 110, 111, 112, 113, 114, 115 and 116 of 2006, on its behalf and legal services were tendered by the Applicant and which services have been taxed and certificate of taxation issued by the Deputy Registrar.
- (c) That the Respondent herein has not filed a reference by way of an appeal against the said taxation or obtained stay of execution of the taxed amount and the certificate of taxation has not been altered.

The grounds are fortified by the facts contained in a supporting affidavit by Ratemo Oira dated 17th October 2008.

Mr. Oira himself argued the application and placed reliance on his supporting affidavit. He said that the material bill were taxed by consent and that no appeal has been preferred in respect thereof. He said that the Respondent's replying affidavit does not provide any evidence and ought to be rejected since it is meant to delay the payment of the advocate fees. He said that the annexed court order is misconceived as a High Court cannot consolidate matters not before itself and more so, cannot consolidate cases filed country wide. He urged this court to enter judgment as prayed and relied on the High Court decision in **HCMISC APP No. 444 of 2004 Kalonzo Musyoka & Another =vs= Rustam Hira (Milimani Commercial Court)**.

In opposing the application, the Respondent filed a replying affidavit dated 29th October 2008 contesting that the applicant has been paid an amount in excess of Kshs. 8 Million which is yet to be accounted for. It is further contended that the High Court in Civil suit No. 243 of 2008 at Millimani Commercial Court has already ordered the applicant to stop any execution or any other enforcement or attempts to enforce payments of the taxed bills of costs in various Miscellaneous applications all over the country.

M/s Ingutia for the Respondent reiterated that the Applicant received monies yet to be accounted for and that the Respondent moved to court and obtained a stay order which has not been challenged.

In response thereto, Mr. Oira said that the order has been challenged by the matter being referred to the Honourable the Chief Justice. He said that this court is only to determine the application before itself.

The material certificate of taxation is dated 9th October 2008 (Annexure marked 'ROA'). It was issued pursuant to a consent between the Applicant and the Respondent meaning that the Retainer was not disputed.

In the circumstances, the Respondent would be obliged to settle the taxed costs and the Applicant would be entitled to judgment in respect thereon in accordance with the provision of Section 51(2) of the Advocates Act.

However, there is a contention by the Respondent that the claimed amount has already been settled but has not been accounted for by the Applicant.

The respondent contends that there is already a High Court order staying the execution of taxed bills of costs against itself in various miscellaneous applications' country wide.

The said order is exhibited in the replying affidavit as annexure marked 'KD2'.

The order is still in force and has yet to be invalidated. It's existence distinguishes this case from that of **Kalonzo Musyoka & Another =vs= Rustam Hira (supra)** where there was no stay of execution in any form.

It is not for this court to sit on appeal against the decision of a court of equal jurisdiction and find that the order issued in favour of the Respondent in Milimani High Court Case No. 243 of 2008 is invalid and cannot apply country wide.

The order remains valid and must be obeyed by all those affected including the applicant herein. It matters not that the order was rightly or wrongly issued. It must be obeyed until such time that it is invalidated or set aside as by law established.

The applicant has indicated that the matter has been referred to the Honourable the Chief Justice. He did not state whether it was so referred in a judicial or administrative capacity.

In any event, the reference of a matter to the Honourable the Chief Justice does not constitute a stay of execution without a specific lawful order to that effect.

Consequently, this is not a suitable case for the entry of judgment on taxed costs unless and until the

existing stay order is set aside.

The application is therefore dismissed with costs.

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

J. R. KARANJA

JUDGE

In the presence of:

Mr. Onsongo for Oira fro applicant

Mr. Ojura for Respondent

JRK/aao