



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU**

Misc. Civ. Appli. 208 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 22nd October 2008, under Section 51 (2) of the Advocates Act, Rule 7 of the Advocates Remuneration Order and Order L Rule 1 of the Civil Procedure Rules, seeks the following orders:-

- (i) That the Advocate/client Bill of costs taxed on the 3rd September 2008 and allowed as against the respondent in the sum of Kshs. 65,000/= 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 application is based on the grounds that:-

- (a) The said costs have already been taxed and certified and that the Respondent is yet to settle the same
- (b) There is no dispute on the retainers since the Applicant was instructed and retained by the Respondent to pursue Kisumu HCCA No. 1 of 2006 on its behalf and legal services were tendered by the Applicant and which services have been taxed and a certificate of taxation issued by the Deputy Registrar.
- (c) 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 amplified by the facts contained in a supporting affidavit deponed by Ratemo Oira dated 2nd October 2008.

Mr. Oira argued the application and relied on his supporting affidavit. He said that the taxed Bill of costs was entered by consent and as such there is no dispute regarding the retainer. He also said that no appeal arises from the certificate of costs. He urged the court to enter judgment as prayed and relied on the High Court decision in the case of Kalonzo Musyoka & Another practicing as Musyoka & Wambua Advocates =vs= Rustam Hira (practicing as Rustam Hira Advocate) HCMISC APP NO. 444 of 2004 (Milimani

Commercial Court)

The respondent in opposing the application filed a replying affidavit dated 29th October 2008 in which it contended that the applicant has been paid an amount in excess of Kshs. 8 Million which is yet to be accounted for. It further contends that the High Court in Civil suit No. 243 of 2008 (originating summons) 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.

The respondent also contents that the bills herein are among those paid but not credited.

Section 51(2) of the Advocates Act, provides 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 hereto 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”.

Herein, the certificate of taxation (Annexure marked ‘RO-1’) was issued on 4th September 2008 following consent between the applicant and the Respondent.

The consent was formally entered on the 3rd September 2008. It implied that the retainer was not disputed.

In the circumstances, the Respondent is obliged to settle the taxed costs now that the bill of costs has not been set aside and/or altered and the applicant by virtue of Section 51 (2) of the Advocates Act would be entitled to judgment upon the taxed costs.

However, the respondent contends that the amount and more have already been settled and all that remains is for the applicant to render account (See paragraph 3 of the replying affidavit).

The respondent has also brought into play an order issued by the High Court vide Milimani HCCC No. 243 of 2008 staying the execution of taxed bills of costs in various miscellaneous applications all over the country.

This present application is one such miscellaneous application. The existence of the said court order which was issued on 29th September 2008 (See Annexure marked ‘RD 2’) is the primary factor which distinguishes this case from that of Musyoka & Wambua Advocates =vs= Rustam Hira (supra).

The order is not disputed by the applicant nor is there any indication that it has since been set aside for one reason or the other. It remains a valid order whether rightly or wrongly issued and must be obeyed by all those affected including the applicant herein.

Consequently, the order sought cannot be granted at this juncture.

The application is 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 Oiro for applicant

Mr. Ojura for respondent

JRK/aao