

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

Misc Civ Appli 771 of 2004

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 OF THE LAWS OF KENYA

AND

**IN THE MATTER OF NAIROBI C.M.C.C. NO. 2839 OF 2000 (JOSHUA OWINO ODANGA ...
VS...AGNES WAGANDA OKWAR)**

BETWEEN

JOSHUA JAIRO OWINO ODANGA.....APPLICANT

AND

EZEKEIEL ODUK (t/a ODUK & CO. ADVOCATES).....RESPONDENT

RULING

The Applicant filed herein originating summons dated 15th October, 2004 seeking orders that the Respondent, his erstwhile advocate, do forthwith render an account of all the monies received for and on behalf of, and also from, the Applicant; that the Respondent do forthwith pay over to the Applicant the amount due to the Applicant upon delivery of the account; and for costs of the proceedings.

When the originating summons came up for hearing on 1st March, 2007 the court was informed that the Respondent paid to the Applicant on 16th January, 2007 KShs. 211,906/50 following taxation of the Respondent's bill of costs. Each party then claimed costs of the proceedings. The Applicant's case for costs is that the originating summons has been overtaken by the event of the Respondent settling the amount due to the Applicant as sought in prayer No. 2 of the originating summons, and that therefore he is entitled costs as they follow the event. On the other hand, the Respondent's case is that the dispute was settled by a taxation sought by the Respondent, and that therefore the Applicant must withdraw the originating summons under Order 24, rules 1 & 3 of the Civil Procedure Rules, in which event the Respondent is entitled to costs.

I have considered the submissions of the learned counsels appearing. It seems to me that the Respondent could not deliver an account as sought by the Applicant in prayer 1 of the originating summons until and unless the Respondent's costs had been duly taxed. By the same token, the Respondent could not pay to the Applicant any sum due to it until such taxation had been done. It further seems to me that the Respondent took the right course of action in seeking taxation of his costs once the suit had been filed in order for it to be determined what he owed to the Applicant, if anything. He paid to the Applicant what was found to be due to him upon taxation. It is also apparent that the Respondent had paid to the Applicant the bulk of the money he had held on his behalf, retaining only the sum that he may have felt was necessary to cover his costs.

In these circumstances, it appears that both parties have acted properly since the filing of the proceedings. The matter is now fully settled to the satisfaction of the parties, except in regard to the issue of costs. Costs are in the discretion of the court, save that they will normally follow the event unless the court or judge shall for good reason otherwise order. See section 27 (1) of the Civil Procedure Act, Cap. 21. What is the event here? The event is that the matter has been settled following taxation of the

Respondent's costs. That taxation cannot be interpreted to mean that one or the other party has succeeded in the suit. The settlement of the matter, in my judgment, is properly attributable to both parties. In the circumstances therefore, it would be just for the parties to bear their own costs of the proceedings. I therefore order that this suit be and is hereby marked as settled. Parties shall bear their own costs of the suit. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF MARCH, 2007.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 23RD DAY OF MARCH, 2007.