



REPUBLIC OF KENYA

HIGH COURT OF AT NAIROBI (MILIMANI LAW COURTS)

Misc Appli 750 of 2004

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

AND

IN THE MATTER OF TAXATION OF COSTS

BETWEEN

AHMEDNASSIR, ABDIKADIR & CO. ADVOCATESAPPLICANT

AND

NATIONAL BANK OF KENYA LTD.....RESPONDENT

ARISING FROM

HIGH COURT CIVIL SUIT NO.857 OF 2001 AT NAIROBI

CHEMAGRO LIMITED

HENRY OGOLA

MERAB APUNDI OGOLA.....PLAINTIFFS

VERSUS

NATIONAL BANK OF KENYA.....DEFENDANT

RULING

This is an application under Section 51(2) of the Advocates Act and Order L Rule 1 of the Civil Procedure Rules for two main orders namely:-

1. That Judgment be entered for the sum of KShs.8,329,330.12 only taxed and certified by the Deputy Registrar as due to the applicants together with interest thereon.
2. That the applicants be at liberty to execute against the respondent.

The application is based upon the grounds stated on the face of the application as follows:-

- (a) That the applicants received instructions from the respondent to defend proceedings against it seeking injunctive reliefs restraining the defendant from exercising a statutory power of sale in Nairobi HCCC No.857 of 2001.
- (b) That an Advocate/Client Bill of Costs in respect of the applicants' costs in the sum of KShs.8,339,330.12 only has been taxed by the Deputy Registrar.
- (c) That a Certificate of Taxation has been issued in respect of the applicants' costs in the sum of KShs.8,339,330.12 which has not been settled.
- (d) That the retainer of applicants is not in dispute.

The application is supported by an affidavit of Hassan Nunow Lakicha a partner in the applicant firm of Advocates sworn on 24.6.2005. The affidavit is an elaboration of the above grounds and exhibits copies of the Bill of Costs, the Certificate of Taxation and a letter of instructions.

The application is opposed and there is a replying affidavit sworn on 1.9.2005 by one Leonard G. Kamweti the respondents Company Secretary. In that affidavit it is deponed that the taxation was being challenged on the basis inter alia that the service rendered by the applicant was based on an illegal agreement and that the applicant had not provided for fees paid by the respondent. It is further deponed that the sum of Shs.8,339,330.12 is colossal and the retainer and the terms thereof are in dispute. In the premises, the respondent prays that judgment be declined.

I heard arguments on 21/5/2007 each side substantially adopting the position in their respective affidavits. Having considered the application, the affidavit evidence filed, the submissions of counsel and the authorities cited, I take the following view of this matter. Under Section 51(2) of the Advocates Act an advocate who seeks an order that judgment be entered in his favour for the sum taxed must satisfy the following minimum conditions:-

- (1) That the taxed costs have been certified by the taxing officer.
- (2) That the certificate has not been set aside or altered by the court.
- (3) That the retainer is not disputed.

In the matter at hand, the advocates have exhibited a Certificate of Taxation for the sum taxed which is the sum claimed. The taxation was unsuccessfully challenged before Hon. Ochieng J and therefore has not been set aside and remains unaltered. The first and the second minimum conditions have therefore been satisfied by the advocates. The client argues that there is a dispute as to the retainer. That argument flies in the face of the material placed before the court. The client's own authority:

Black's Law Dictionary defines retainer inter alia as follows:

“In the practice of Law, when a client hires an attorney to represent him, the client is said to

have retained the attorney. This act of employment is called the retainer...”.

There is no doubt in this case that the client employed the advocates. The retainer is therefore not disputed. Indeed it was on the basis of the retainer that the advocates' Bill of Costs was lodged and entertained by the taxing officer. The fact that the client intends to challenge the decision of Hon. Ochieng J on reference cannot in my view be a dispute as to the retainer. The entire process of taxation and any challenge thereto is usually on quantum. A dispute on quantum cannot to my understanding be a dispute as to the retainer.

In the premises, the advocates have satisfied the minimum conditions set under Section 51 (2) of the Advocates Act and are entitled to an order that judgment be entered for the sum certified to be due. The Notice of Motion dated 9.6.2005 and filed on 28.6.2005 is allowed as prayed in paragraphs 1 and 3. With regard to prayer 2 the same is granted subject to the advocates making a formal application for execution in which credit will be given for sums if any received by them. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JULY 2007.

F. AZANGALALA

JUDGE

Read in the presence of:

Ojiambo for the Client and Omino holding brief for Ahmednasir for the advocates.

F. AZANGALALA

JUDGE

9/7/07