



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS APPLICATION 260 OF 2007

MBUGUA & MBUGUA ADVOCATES PLAINTIFF

Versus

KENINDIA ASSURANCE COMPANY LTD. DEFENDANT

JUDGMENT

This Notice of Motion dated 20th July 2007 is brought under Section 51 of the Advocates Act praying for judgment of this court on the basis of the Applicant's taxed costs as certified in the Taxing Officer's certificate of Taxation dated 11th July 2007 – in the sum of KShs.43,675/=.

The Respondent filed no opposition to the Notice of Motion but during the hearing before me, Mr. Omwenga appearing for the Respondent made an oral application that the decision of the Taxing Officer be referred back to the Taxing Officer because there are calculation mistakes in the figures. As a result of what he was saying, I gave him, together with Mr. Mbugua of the Applicant Advocates, the opportunity to discuss the matter and report their agreement to me before I rose that morning as I went on with other cases.

When they returned, Mr. Mbugua was saying that the certificate of taxation was showing a deficit figure of about KSh.10,000/= while Mr. Omwenga was saying that the Certificate of Taxation had a figure containing an excess of about KShs.11,000/=. That is while according to Mr. Mbugua the amount of taxed costs in the certificate of taxation should have been KShs.53,675/=, according to Mr. Omwenga that sum of money should have been KShs.32,675/=. Each was using figures from the taxation proceedings recorded by the Taxing Officer.

But as Mr. Mbugua went further to say that he was prepared to accept KShs.43,675/= in the Certificate of Taxation and forgo the KShs.10,000/=, Mr. Omwenga insisted that the taxation proceedings be referred back to the Taxing Officer to correct what Mr. Omwenga called a mistake in order to bring the taxed sum of money down to KShs.32,675/=.

Now at this stage without any objection having been raised against the taxation under Rule 11 of the Advocate's (Remuneration) Order and the stage for reference under Rule 12 of the Advocates (Remuneration) Order having long passed and, further, the Respondent having filed and served no papers

either supporting or opposing this Notice of Motion, what reference is Mr. Omwenga talking about in law? I could and cannot see any as I think his oral application is misconceived and should not be entertained. Accordingly I do reject it.

This Notice of Motion is unopposed and Section 51 (2) states 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 thereto 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."

The Certificate of Taxation can only be set aside or altered by the court through proceedings undertaken under Rule 11 of the Advocates (Remuneration) Order. That is the only lawful way of doing it and Mr. Omwenga is not doing it that way. I therefore find nothing lawfully preventing the Applicant from getting the judgment the Applicant is asking for in this Notice of Motion.

Accordingly the said Notice of Motion is hereby granted and judgment entered in the sum of money certified in the Certificate of Taxation dated 11th July 2007.

In accordance with Rule 7 of the Advocates (Remuneration) Order, the said costs will be paid with interest at the rate of 14% from 23rd February, 2007.

The Respondent to pay costs of this Notice of Motion.

Dated this 22nd day of October, 2007.

J. M. KHAMONI

JUDGE

Present:

Mr. Mburugu for Mr. Mbugua for the Applicant.

Mr. Omwenga for the Respondent

Court Clerk – Kipkurui

Further Order: Upon oral application by Mr. Omwenga, there be a stay of execution for 30 days from to-day.

M. KHAMONI

JUDGE

22.10.07