



Malombo t/a OM Robinson & Company Advocates v Lattman (Miscellaneous Application E028 of 2024) [2024] KEHC 16959 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEHC 16959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E028 OF 2024
F WANGARI, J
NOVEMBER 14, 2024**

BETWEEN

**ROBINSON ONYANGO MALOMBO T/A OM ROBINSON & COMPANY
ADVOCATES APPLICANT**

AND

ROLF ROBERT LATTMAN RESPONDENT

RULING

1. The ruling is in respect of the Notice of Motion dated 12/08/2024. The application seeks the following orders: -
 - a. That judgment be entered for the Applicant against the Respondent in the sum of Kshs. 243,943/= with interest in accordance with the Certificate of Taxation and dated 17/07/2024.
 - b. Costs be provided.
2. The Respondent filed a Replying Affidavit dated 16/09/2024 stating that the agreed legal fees between the parties was Kshs. 250,000/= and he paid the same in full. He paid Kshs. 150,000/= via Mpesa, and a certified copy of the Mpesa statement was annexed as an exhibit. The balance of Kshs. 100,000/= was said to have been paid in cash.
3. The Respondent further averred that the taxed amount was less than the legal fees charged by the Applicant. Further, he later came to learn that judgment in the lower court had been entered in his favour on 17/07/2023, for Kshs. 531,550/=. He was never informed of the same by his then advocate, the Applicant herein.
4. He averred that he kept on following up on the status of his case with no avail. He was then served with the Taxation Notice as the 'advocate/client relationship had ceased'. Upon instructing the current



advocate on record to file a reference to the bill of costs, the same had already been taxed at Kshs. 243,943/= which was less than the amount he had paid for as legal fees.

5. The court directed that the application would be disposed of by way of written submissions. Both parties complied by filing their rival submissions which I have perused and considered.

Analysis and Determination

6. Having considered the application, the supporting affidavit, the response and the submissions thereto, the issues for determination are;

- a. Whether the application is meritorious;
- b. What is the order as to costs?

7. On the first issue, it is undisputed that taxation was done in this miscellaneous file. However, no reference was filed against the Certificate of Costs. What is required of the court is to enter judgment, the Certificate of Costs having not been set aside. I find that the Applicant rightfully sought for entry of judgment in this file.

8. The Bill of Costs against the Respondent was taxed at a sum of Ksh. 243,943= and a Certificate of Taxation issued on 1707/2024. 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 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.”

9. Rule 7 of the [Advocates \(Remuneration\) Order](#) provides that: -

“An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.”

10. The Certificate of Taxation has not been set aside. However, the contents of the Replying Affidavit cannot be ignored. The Respondent stated that he had paid the full amount as legal fees. He produced an Mpesa statement as proof of payment of Kshs. 150,000/=. Though the balance was said to have been paid in cash, it is expected that a receipt was issued, or any other form of acknowledgement of receipt. However, he attached a letter by his lawyer to the Applicant stating that the full amount had been paid.
11. The Applicant did not respond to the allegation either by way a Further Affidavit, and he was also silent in his written submissions. I find that the Respondent evidence that he paid Kshs. 250,000/= towards legal fees remains unchallenged.
12. However, the Respondent is not entitled to the difference between the actual legal fees paid and the taxed costs. The reasons being that that was the agreed costs between the two parties, hence he is bound by the terms of the agreement. Under the circumstances, Rule 7 of the [Advocates Remuneration Order](#) does not apply.
13. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the [Civil Procedure Act](#). The court reserves its discretion on whether to award costs to either party. This



was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others* [2013] eKLR. In the present circumstances, considering the already broken Advocate/ Client relationship, the proceedings must come to an end. Each party to bear its own costs.

14. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
- a. That the Notice of Motion dated 12/08/2024 has got no merits and is hereby dismissed.
 - b. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 14TH DAY OF NOVEMBER, 2024.

F. WANGARI

JUDGE

In the presence of:

Applicant present in person

N/A by the Respondent

Brian, Court Assistant

