



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC. CIVIL APPEAL NO 3 OF 2017**

**F.A. BADIA & CO. ADVOCATES.....APPELLANT**

**VERSUS**

**AUGUSTINO ONANDA..... RESPONDENT**

**RULING**

The application dated 28<sup>th</sup> January, 2021 seeks the following orders:-

**1. THAT the Honourable Court be and is hereby pleased to enter judgment for the Advocate/Applicant against the Respondent in the sum of Kshs.184,799.00 being certified costs as per Certificate of Taxation herein dated 14<sup>th</sup> January 2021.**

**2. THAT the Honourable Court be and is hereby pleased in accordance with Paragraph 7 of the Advocates (Remuneration) Order to charge interest at 9 percent per annum on disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of the Bill of Costs to the Respondent on the specific date as hereunder.**

**a) Augustino Onanda 30<sup>th</sup> January 2017 (30/1/2017)**

**3. THAT the costs of this application be provided for.**

The application is supported by the affidavit of Badia A. Fiona Advocate and a further affidavit sworn on 22<sup>nd</sup> February, 2021. The respondent filed a replying affidavit sworn on 5<sup>th</sup> February, 2021.

The application seeks to have the Certificate of costs be made a judgment of this court. There is a prayer for interest. The applicant is an advocate who was retained by the respondent in **Milimani Civil Case Number 4101 of 2012 [Agostino Ondanda –V- Samuel Njenga and Orokise Sacco Ltd.]**. Judgment in that case was delivered on 8<sup>th</sup> August, 2014 whereby the respondent herein was awarded Kshs.240,000.

It is evident that the advocate – client relationship developed problems and the applicant taxed her costs. The Taxing Master taxed the costs at Kshs.184,799/-. The respondent avers that he was awarded Kshs.240,000 by the Magistrate’s Court and was shocked to receive a notice of taxation. The sum of Kshs.240,000 was paid to the applicant. According to the respondent, he used to pay his Advocate the instruction fees as demanded. The respondent seeks to have the certificate of costs set aside.

Virginia N. Ngari filed an application dated 21<sup>st</sup> January, 2021 seeking to enjoin her and Valley Auctioneers as Interested party. She would also like to have the attachment on her property lifted. The application is supported by her affidavit sworn on 21<sup>st</sup> January, 2021. There are grounds of opposition dated 22<sup>nd</sup> February, 2021 filed by E.A. Badia & Co Advocates and a replying affidavit sworn by Badia Fiona on 22<sup>nd</sup> February, 2021.

Virginia informed the court that her properties were attached. She is a stranger to the proceedings. She lives with the respondent, Agostino but the attached goods are hers. Augustino Onanda swore an affidavit on 5<sup>th</sup> February, 2021 indicating that the proclaimed properties do not belong to him.

On her part, Badia Fiona maintain that the execution warrants were issued in a different file namely Miscellaneous Civil Application No. 2 of 2017. I managed to call for that file and noted that there is an application dated 22<sup>nd</sup> February 2021 seeking to have the certificate of taxed costs be made a judgment of the court. The taxed costs are for Kshs.24,273/-. There is a breaking in order issued in favour of Samuel Mutahi Gathogo T/A Valley Auctioneers to break into the judgment debtor’s premises. The order was issued as a result of an application brought

under Certificate of urgency dated 3<sup>rd</sup> February, 2021. The application makes reference to a decree issued on 13<sup>th</sup> January, 2021 as per paragraph (1) of the grounds in support of the application. There is a second certificate of cost for Miscellaneous Application number 2 of 2017 is dated 27/11/2021. The application for execution gives a date of decree as 11<sup>th</sup> March, 2020. A decree for Kshs.148,530 was issued on that date. The decree is in relation to Civil Appeal No 2 of 2014 and a Certificate of Taxation was issued on 27/11/2017.

From the background of the dispute, it is clear to me that there are two different files namely Misc 2/2017 and Misc 3 of 2017. Both involves taxed legal fees between M/s F.A. Badia & Co. Advocates and Augustino Onanda. The warrants of execution were issued in file No. 2 of 2017. The application by Virginia was filed in Misc. file number 3 of 2017 and is therefore in the wrong file. I had the advantage of hearing Virginia and Augustino and they appear to me to be educated people who understand the court processes as they filed the documents on their own and were able to log into the system and canvas their cases. I do therefore find that the application dated 21/1/2021 by Virginia N. Ngari cannot be granted as it relates to a different file. Even the warrants annexed to the supporting affidavit state the case number as 2 of 2017. Virginia is advised to file her application in the correct file. I do proceed and dismiss the application dated 21/1/2021 with no orders as to costs.

The applicant's bill of costs was taxed. Augustino received the notice of taxation. He ought to have challenged the applicant's bill of costs before the Taxing Master and not before this court. The respondent is enlightened and has been battling court cases. He cannot object to the taxed certificate of costs at this stage. He is at liberty to go back to the Deputy Registrar and seek a review of the taxed bill of costs in both Misc. 2 of 2017 and Misc. 3 of 2018. He can also file references against the taxation.

The application seeks two main prayers. Apart from the entry of judgment in terms of the taxed certificate of costs, the applicant is also seeking to have interest charged at 9% P.A It is admitted that some legal fees was paid to the applicant. The respondent contend that a sum of Kshs.240,000 was paid to the applicant. It's not clear how that amount was paid. In the event that it is established that a sum of kshs.240,000 was paid to the applicant herein, it will be unethical for counsel to obtain warrants of execution as she can use it to offset his taxed costs of Kshs.184,799.

In the end, I do find that the application dated 28<sup>th</sup> January, 2021 is merited and is granted in terms of prayer one (1) only. Parties shall meet their respective costs.

Dated and Signed at Nairobi this 4<sup>th</sup> day of **March**, 2021

**S. CHITEMBWE**

**JUDGE**