



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

HIGH COURT MISC. APPLICATION NO. 83 OF 2019

**JOSHUA KIPKEMOI MUTAL.....APPLICANT**

**VERSUS**

**SYLVIA J. JONATHAN MOI CLINT KIPRONO MOI (Sued as the Administrators**

**of the estate of JONATHAN KIPKEMOI MOI) .....RESPONDENT**

**R U L I N G**

1. The matter was referred to this Court for determination on the issue of retainer. The Respondents opposed the taxation of the bill of costs file by the Applicant on the basis that the Applicant admitted that there was a retainer agreed of Kshs.150,000/= and therefore the Applicant is estopped from charging further fees contrary to the agreement.
2. The Respondent submitted that the Applicant had admitted the payment of the retainer and therefore the requirement of a written agreement has been dispensed with and in any event the Applicant would be in custody of the said agreement.
3. The Applicant filed a bill of costs in respect of legal services rendered to the deceased **JONATHAN KIPKEMOI MOI**. The Respondent who is the Personal Representative of the deceased opposed the taxation on the basis of the admitted retainer paid to the Applicant by the deceased.
4. The parties filed written submissions dated 22<sup>nd</sup> February, 2021 and 24/2/20201 respectively which I have duly considered.
5. I find that it is not in dispute that the deceased used to pay the Applicant a retainer of Kshs.150,000/= per year.
6. The issues for determination are as follows:-
  - i. Whether the Applicant is estopped from filing a bill of costs on the basis that he admitted having been paid a retainer of Kshs.150,000/= per year by the Deceased.**
  - ii. Whether there is a difference between a retainer and a retainer agreement.**
7. On the issue as to whether the Applicant is estopped from filing a bill of costs, I find that the fact that the deceased used to pay the Applicant a retainer does not estop the Applicants from filing a bill of costs.
8. There is a difference between a retainer and a retainer agreement envisaged by Section 45 (i) of the Advocates Act.
9. The retainer agreement must be signed by the client or his agent duly authorized to sign on his behalf in order to be binding.
10. The retainer is fee paid by the client for the lawyer to be available when the client needs legal help during a specified period and the same need not be paid pursuant to a written agreement.
11. An Advocate who has entered into a retainer agreement cannot file a bill of costs. However, one who is paid a retainer is entitled to tax his bill of costs as the retainer is not an agreement fixing the amount of Advocate's remuneration but simply an engagement fee or advance payment for work to be done or retaining fee.
12. I find that the Applicant is entitled to have his bill of costs taxed in the absence of a written agreement signed by the client or his agent

duly authorized to sign on his behalf.

13. I accordingly refer this file back to the Deputy Registrar of this Court for purposes of taxation of the Applicant's bill of costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 9<sup>TH</sup> DAY OF APRIL, 2021**

**A. N. ONGERI**

**JUDGE**