



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

MISC. CIVIL APPLICATION NO. E120 OF 2021

BETWEEN

OSORO KENNEDY OMWOYO

T/A OSORO OMWOYO & COMPANY ADVOCATES.....APPLICANT

AND

AMB. AL-HAJ PROFESSOR BADRU D. KATEREGGA.....1<sup>ST</sup> RESPONDENT

KAMPALA UNIVERSITY LIMITED.....2<sup>ND</sup> RESPONDENT

RULING

1. By the Notice of Motion dated 12<sup>th</sup> February 2021, the Applicant seeks judgment for KES. 570,024.00 against the Respondents together with interest at 12% p.a. from 22<sup>nd</sup> January 2021 until payment in full together with costs. The claim is based on a Certificate of Taxation dated 11<sup>th</sup> February 2021 in which the Deputy Registrar certified costs due to the Applicant in the sum of KES. 570,024.00 in **ML HC Misc. No. E060 of 2018**.

2. The Respondents oppose the application through the replying affidavit of the 1<sup>st</sup> Respondent sworn on 24<sup>th</sup> March 2021. He depones that he and the Applicant are directors and Trustees of the East Africa University Company Limited which is affiliated with Kampala University Limited. He further depones that the Applicant was at all material times the Company Secretary of the East Africa University Limited and ordinarily dealt with legal issues and was required to act on the basis of the board's written instructions. He asserts that the Applicant did not have instructions and that an advocate-client relationship did not exist. The 1<sup>st</sup> Respondent explains that when the Applicant drew an agreement between Saleka Academy Limited and Kampala International University, he acted on his own capacity.

3. The Respondents complain that the parties did not agree on any fixed amount and that the amount awarded by the Deputy Registrar was exorbitant. They state that the Deputy Registrar did not give reasons for the specific amount awarded to the Applicant. They maintain that they are distinct legal person capable of being sued separately and none liable for the debts of one another hence bills of costs ought to have been considered separately and as such there was a misjoinder of persons leading to a miscarriage of justice. The Respondent urge the court to strike out the application. The further complaint is that they were not notified when the ruling was delivered and were thus unable to seek stay or file an objection.

4. The Respondents add that they are willing to pay the taxed amount in instalments because of the economic circumstances brought about by the COVID-19 pandemic that has resulted in closure of the business for some time.

5. Both sides filed written submissions in support of their respective positions. The issue is for determination is whether the court should enter judgment against the Respondents based of the Certificate of Taxation issued by the Deputy Registrar. The basis for seeking judgment is to be found in **section 51(2)** of the **Advocates Act** which states that:-

*51 (2) The certificate of the taxing officer by whom a 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.*

6. Under the aforesaid provision, the Certificate of Taxation is conclusive as to the quantum of costs and the court is entitled to enter judgment against a client unless the retainer is disputed in which case, the court must resolve the issue. In this case, the Respondents argue on one hand that the Applicant did not have instructions and on the other hand, they state that they are willing to settle the amount certified as costs which is an implicit admission that they are liable. Although neither party produced documentation to lay bare the nature of instructions, the ruling subject of the taxation refers to two transactions where Applicant acted for Kampala University Limited purchasing land from Saleka Academy Limited. In both instances, the Applicant acted for the 1<sup>st</sup> Respondent as purchaser and drew a sale agreement and deeds of acknowledgement. I cannot therefore say that on the basis of the material before the court that the Applicant did not have any instructions to act for the Respondents. In any case, the Respondents did not rebut the facts presented with any documents other than stating that the 1<sup>st</sup> Respondent and Applicant are directors of a different corporate entity.

7. As regards the quantum of costs, the Certificate of Costs is conclusive as to the amount unless challenged and set aside by way of a reference under **Rule 11** of the **Advocates Remuneration Order**. Further all aspects of the decisions or any objections to the Bill of Costs can only be dealt with by filing a reference. The Respondents have not filed any reference or sought extension of time to file the reference hence I cannot comment the other objections raised by the Respondents.

8. I therefore allow the Notice of Motion dated 12<sup>th</sup> February 2021 on the following terms:

**a. Judgment be and is hereby entered for the Applicant against the Respondents jointly and severally for the sum of KES. 570,024.00 only.**

**b. The sum shall accrue interest at 12% p.a. from 21<sup>st</sup> January 2020 until payment in full.**

**c. The Applicant is awarded costs of KES. 5,000.00 as costs for the application.**

**DATED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF JULY 2021.**

**D.S. MAJANJA**

**JUDGE**

Court Assistant: Mr M. Onyango

Mr Omwoyo instructed by Osoro Omwoyo and Company Advocates for the Applicant.

Mr instructed by Njogu Mungai and Company Advocates for the Respondents.