



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

MISC. CIVIL APPLICATION NO. 120 OF 2019 (O.S)

CAROLINE KHASOA T/A

KHASOA & CO.ADVOCATES.....APPLICANT

VERSUS

PATRICK TEDDY & PARTNERS.....RESPONDENT

RULING

By an Originating Summons dated 18th December 2019 brought under Order 37(1) of the Civil Procedure Rules, the applicant seeks orders;-

- 1. That the applicant is entitled to Kshs 2, 750,000/=**
- 2. That the firm of Patrick, Teddy & Partners who are holding the said money on behalf of their clients to forward the same to the applicant through V.A Shibanda & Company Advocates representing the applicant herein.**
- 3. That the firm of Patrick, Teddy & Partners who are holding the said money on behalf of their clients be and are hereby ordered not to release the said money to the petitioners in Bungoma High Court Succession Cause Number 53 of 2014 until the hearing and determination of this matter.**
- 4. Such orders as the court may deem fit as to costs of the application.**

The application is supported by the affidavit of Caroline Khasoa Advocate.

She depones that she represented Josephine Kapukha Khisa, Clive Nandasaba Khisa and Esther Mulekyo Kithome (hereinafter the petitioners) in Succession Cause No. 53 of 2014. The said petitioners are now represented by the respondent who took over from the applicant before the conclusion of the aforesaid matter. The matter is now concluded.

That upon the respondent coming on record, the applicant and the petitioners entered into consent on the amount of fees payable to the applicant. The agreed fees have not been paid to date. She depones that the amount being proceeds of the deceased estate is now in custody of the respondent and is seeking orders of this court directing the respondent not to release the said amount to the petitioners but to her.

The applicant filed advocate-client bill of costs which was declined by the taxing master due to the existence of an agreement on costs payable to the applicant.

The respondent did not file any responses to the application thus the applicant's factual averments remain uncontroverted. The application was disposed of by way of written submissions. The applicant complied while the respondent did not. The applicant's submissions on record have been considered. The issue to be determined is whether the applicant is entitled to the orders sought.

Under section 45 (1) of the Advocates Act, it is provided;

Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—

(a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate's remuneration in respect thereof;

(b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate's instruction fee in respect thereof or his fees for appearing in court or both;

(c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof;

and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

As far as is relevant to these proceedings, the agreement in clauses 1 and 2 provide;-

1. Khasoa & Company Advocates represented the three petitioners /respondents herein in this matter before this honourable court.

2. Khasoa & Company Advocates are thus entitled to an outstanding legal fees and costs of Kshs 2, 750,000/= (Kenya Shillings Two Million, Seven Hundred and Fifty Thousand) only in this matter.

It is not in dispute in the application that there is an agreement settling the fees payable to the applicant. The same has not been set aside and is therefore still in force. Until and unless the same is set aside, the respondent is bound to settle.

The court notes the applicant had filed a bill of costs before the taxing master. The respondent herein who represented the respondents in that matter raised an objection which was subsequently upheld by the taxing master on the grounds that there is an agreement in force.

The applicant states that part of the Kshs 2, 750,000/= has already been paid to them and what remains is Kshs 1,250,000/= held by the respondent.

In the premises, the application is merited. The respondent is hereby ordered to release the sum of Kshs 1, 250,000/= to the applicant through V.A Shibanda & Company Advocates for onward transmission to the applicant.

DATED AT BUNGOMA THIS 5TH DAY OF NOVEMBER, 2021

S. N. RIECHI

JUDGE