



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL NO. 81 OF 2017

KIAMA WANGAI & CO. ADVOCATES.....APPLICANT

VERSUS

TABITHA NJERI KIHARA.....RESPONDENT

RULING

1. The application dated 18th April, 2018 and the application dated 9th May, 2018 were argued simultaneously. This ruling is therefore in respect of both applications.
2. The application dated 18th April, 2018 seeks orders that the decision of the Deputy Registrar dated 22nd March, 2018 be set aside and/or varied and the Applicant's Bill of Costs dated 27th February, 2017 be taxed afresh.
3. The Client herein is dissatisfied with the decision of the Taxing Officer herein. It is contended that the Taxing Officer arrived at the wrong value of the instruction fee considering the nature of the instructions and the work undertaken. That the Taxing Officer failed to consider that the Advocate filed Petition No. 260/2013, Petition 335/2013 plus the Misc. Application herein all arising from the same instructions ostensibly to enrich himself.
4. It is further asserted that the amount taxed is so high as to result to an injustice taking into account the nature of the case, the interest of the parties in the matter and the conduct of the proceedings. It is averred that the Taxing Officer also erred in failing to consider the delay caused by the Advocate's firm that led to the filing of a Notice of Change of Advocates.
5. The application is opposed. It is stated in the replying affidavit that the claim in HCCC 698 of 2003 was settled at 14 million and the party and party costs at Ksh.2,200,000/=. That the clients current advocates (Wandabwa Advocates) cannot be heard to talk of an excessive award of Ksh.743,932/= yet they were paid the sum of Ksh.2,200,000/= after merely taking over the suit and recovering the settlement thereof.
6. The Advocate subsequently filed the application dated 9th May, 2018 which seeks orders that judgment be entered for the Advocate/Applicant as against the Client/Respondent for the sum of Kenya Shillings Seven Hundred and Forty three Thousand, Nine Hundred and Thirty two (Kshs. 743,932.00) being certified costs due to the Applicant.
7. Secondly, that the Applicant (Advocate) be paid by the Respondent (Client) interest on certified costs at the rate of 14% per annum from 22nd March 2018 until payment in full. It is stated that the Bill of costs dated 27th February, 2017 was taxed at the sum of Ksh.743,932/= and a certificate of taxation issued. That the certificate of taxation has not been set aside and nor has the same been set aside varied or reviewed.
8. In a replying affidavit filed in opposition to the application, it is stated that the taxed amount is exorbitant taking into account that the matter was settled out of court. The court was urged to determine the Reference filed herein first.
9. The two applications were argued by way of written submissions which I have considered.
10. The Taxing Officer based the instruction fees on the sum of Ksh.16,200,000/= which amount was discerned from the settlement being Ksh.14,000,000/= and Ksh.2,200,000/= Party and Party costs. The calculation was therefore based on the correct value. (See for example **Joreth Ltd v Kigano [2002] eKLR**)

11. It was submitted on behalf of the Client that items 1-19 were taxed under year 2009 Remuneration Order instead of the 1997 Remuneration order. However, it is noted that the Advocate for the Client in his submissions during the taxation submitted on the correct Remuneration Order as the one for year 2009. This was the correct submission since the suit the subject of the Bill of Costs herein was filed in the year 2013.

12. On the issue of multiplicity of suits said to have been filed by the Advocate in order to unjustly enrich himself, I agree with the ruling by the Taxing Officer that the other suits referred to were not before the Taxing Officer herein. It is clear that the Advocate was instructed in the matter that is the subject of the Bill of Costs herein. Whether the Advocate was instructed in the other matters can only be determined in the other matters.

13. With the foregoing, I find no merits in the application dated 18th April, 2018 and the same is hereby dismissed with costs. Consequently, the application dated 9th May, 2018 is allowed with costs.

Date, signed and delivered at Nairobi this 6th day of May, 2020

B. THURANIRA JADEN

JUDGE