



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC. CIVIL. APPL NO. 100 OF 2013

LAWRENCE MWANGI & CO. ADVOCATES.....APPLICANT

VERSUS

JOHN MATHIAKA KIMUNDU.....RESPONDENT

RULING

1. Sometime in July, 2009, the Respondent herein, John Mathiaka Kimundu, approached the Applicant with instructions to file suit on his behalf. The suit was to be against the Agricultural Finance Corporation (AFC) over a disputed loan of Kshs. 79 Million. AFC had threatened to sale the Respondent's two parcels of land. The Applicant took instructions and proceeded to file Civil Suit No. 208 of 2009 at the Nakuru High Court in July, 2009.

2. That suit was eventually withdrawn by the Respondent after he filed a notice to act in person. However, that suit spawned the present litigation. The Applicant filed an Advocate-Client Bill of Taxation against the Respondent. There were many twists and turns along the way – but suffice it to say that on 17/10/2014, the Learned M.I.G. Moranga, Deputy Registrar, delivered a ruling taxing the bill at Kshs. 1,037,537. This was after an inter partes hearing held before the Learned Deputy Registrar on 02/07/2014. At the inter partes hearing, the Respondent was represented by Mr. Kamanga of Njuguna Kamanga & Co. Advocates.

3. Pursuant to the ruling dated 17/10/2014, a Certificate of Taxed Costs was issued on 16/01/2015.

4. It is important to state at the outset that the decision by the Taxing Master was never challenged by the Respondent under paragraph 11 of the Advocates (Remuneration) Order. Instead, as one of the twists and turns in this case, the Respondent filed a wholly new suit to wit Nakuru High Court Civil Suit No. 65 of 2014 seeking orders that he is not obliged to pay any sums other than what he had already paid to the Applicant. That suit was summarily dismissed on 05/03/2015. The Learned Judge observed that the correct procedure should have been for the Respondent to challenge the decision of the Taxing Master under the Advocates Remuneration Order.

5. Still, the Respondent did not file any objection under Paragraph 11 of the Advocates Remuneration Order.

6. The present Application is dated 22/02/2016. In main part, it seeks for the following two prayers:

a)

b)

c) *That the costs as taxed on 17th October, 2014 in the sum of Ksh 1,037,537/= be made the judgment of this court.*

d) *That this Honourable Court do order interest on the taxed costs at 14% court rates do issued from 17th October, 2014 and the same be paid alongside the taxed costs.*

7. The Application is brought under section 51(2) of the Advocates Act and Rule 7 of the Advocates (Remuneration) Order. Section 51(2) of the Advocates Act provides as follows:

The certificate of the taxing officer by whom any 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.

8. The wording of the statute seem clear to me. Once the Taxing Master has issued a Certificate of Taxation, the Court has discretion to enter judgment in favour of the advocate if two conditions are met:

- a. Where the Certificate of Taxation has not been set aside or altered by the Court; and
- b. Where there is no dispute as to retainer.

9. In the present case, there is no contest that the Certificate of Taxation has not been set aside or altered.

10. What about the issue of retainer? The Respondent does not contest that he retained the advocate's services. Indeed, this was not an issue raised during the taxation proceedings at which the Respondent was represented by Counsel. As I understand it, the Respondent's whole claim is that the advocate did not possess a Practising Certificate and that, therefore, the Certificate of Taxed Costs should be invalidated.

11. I do not think the reasons given by the Respondent are meritorious for three reasons.

12. First, there is no question that the advocate had a Practising Certificate when the Respondent retained him, and when the advocate offered his services by filing suit and litigating it on behalf of the Respondent. The Respondent seems to be raising questions about the advocate's practicing certificate at the time of filing the Bill of Costs.

13. Second, even if what matters is whether the advocate had a practicing certificate at the time of taxation, all the Respondent does is raise questions. If, indeed, the advocate was not qualified to practice at the time and the Respondent believed this to debar him from the taxation process that complaint ought to have been raised before the Taxing Master and/or preserved for determination by this Court. Neither things happened. Instead, the Respondent's advocate appeared before the Taxing Master and argued about the line items in the Bill of Costs. No question was raised about unsuitability of the advocate to file the Bill of Costs in the first place. Similarly, no issue at all about retainer was raised.

14. Third, the law has provided for an avenue to use if one is dissatisfied with the decision of a Taxing Master. That avenue is provided in Paragraph 11 of the Advocates (Remuneration) Order. It provides as follows:

11. Objection to decision on taxation and appeal to Court of Appeal.

(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.

15. Hence, the procedure for challenging the decision of a Taxing Master is clearly enunciated in the law. It is animated by filing a reference within fourteen days with the Court given discretion to enlarge time in appropriate cases. In the present case, the Respondent has neither timeously filed a reference or sought to enlarge time to file one. This is so, even after, in a ruling delivered on 05/03/2015, Justice Janet Mulwa expressly guided the Respondent on what he needed to do if he was minded to challenge the Certificate of Costs. After that ruling, which dismissed another ill-fated attempt to challenge the taxed bill, the Respondent sat pretty and waited for the Applicant to file the present Application to obtain judgment before springing to action in opposition. That feeble opposition has come too little; too late.

16. Our courts have, in various pronouncements, explained that this procedure for challenging a taxed bill is mandatory and is not a mere technicality. See, for example, *Moses Mwicigi & 14 Others v Independent Electoral and Boundaries Commission & 5 Others [2016]eKLR and Alfred Ochieng Opiyo t/a Ochieng Opiyo & Co Advocates v Export Hydro Pump and Services (Africa) Limited [2018] eKLR.*

17. The bottom line is that there is a valid Certificate of Taxed Costs in this matter. It has never been set aside or altered. It has not been challenged in the manner the law provides it should be challenged. It is valid. It is legitimate. There are no good reasons not to confirm it as a judgment of the Court. It is hereby so confirmed. In other words, the Application dated 22/02/2016 is allowed in the following terms:

a. That the costs as taxed on 17th October, 2014 in the sum of Ksh 1,037,537/= are hereby made the judgment of this Court.

e) That the taxed costs shall attract interest at 14% rate from 17th October, 2014 and the same be paid alongside the taxed costs.

18. Orders accordingly.

Dated and delivered in Nakuru this 15th day of January, 2019

JOEL NGUGI

JUDGE