

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

IP NO. 3 OF 2018

WAMBUGU KARIUKI & ASSOCIATES ADVOCATES.....PETITIONER

VERSUS

INVESCO ASSURANCE COMPANY LTD.....RESPONDENT

RULING

1. Through a petition filed on 2nd February 2018, the petitioner sued the respondent claiming the total sum of kshs 3,860,547.18 being the amount due and owed to the petitioner in respect of costs for legal services rendered. The respondent filed a response to the petition on 13th March 2018 in which it denied owing the said amount.
2. By a consent order recorded before the Deputy Registrar on 19th February 2018, parties agreed that the respondent pays to the petitioner the sum of kshs 1 million on or before 23rd March 2018 and thereafter the sum of kshs 400,000 every month with effect from 30th April 2018 till payment in full and that the issue of costs of the petition would be discussed between the parties in due course.
3. The respondent thereafter made the monthly repayment, albeit with a few defaults in certain months, and on 23rd January 2019, Mr. Kariuki, learned counsel for the petitioner informed the court that there was a balance of kshs 182,803 still due and owing from the respondent whereupon the Deputy Registrar directed the parties to mention the matter before this court for directions. On 5th March 2019, counsel for both parties made argument regarding the question of whether or not the respondent still owes the petitioner the sum of kshs 182,803. While Kariuki for the petitioner argued that the sum of kshs 3,860,549 had been paid, he at the same time stated that there was still an outstanding sum of kshs 182,803 owing from the respondent. He explained how the amount in question arose from the petitioners various bills of costs that had been taxed before the various courts and certificates of costs issued.
4. On his part Mr. Omiti learned counsel for the respondent submitted that the amount of money that the petitioner is asking for had been paid in full and that the petitioner cannot turn around and claim that the amount has not been paid.
5. In my humble view, the determination of the dispute herein will be pegged on the pleadings filed herein and the consent order recorded on 19th February 2018. It is trite law that parties are bound by their pleadings. In this case, the petitioner claimed a specific sum of kshs 3,860,548.18 after which parties entered into a consent on the mode of payment of the said sum. Indeed on 5th March 2019, the petitioner intimated to this court that the sum of kshs 3,860,547 had been paid to them but that there was a balance of kshs 182,803 still due and owing from the respondent.
6. Considering that the claim contained in the petition was for the sum of kshs 3,860,547.18, this court is at a loss as to how, after paying the said sum in full, the respondent can still be indebted to the petitioner for the claimed sum of kshs 182,803. It could be possible that the petitioner did not do a proper calculation of the sum actually due to them at the time of the filing the petition. I however find that this courts hands are tied by the pleadings before it and in the event that the petitioner contends that it is owed more than it pleaded in the petition, then that should form the subject of a different suit.
7. In a nutshell am unable to find that the petitioner is owed more money than what was pleaded in the petition and agreed upon in the consent order recorded on 9th February 2018.

Dated, signed and delivered in open court at Nairobi this 14th day of May 2019.

W. A. OKWANY

JUDGE

In the presence of

Mr Kariuki for petitioner

Mr Okega for Omiti for respondent

Court Assistant - Ali