



REPUBLIC OF KENYA.

IN THE HIGH COURT AT ELDORET.

MISC. APPLICATION NO. 26 OF 2015.

IN THE MATTER OF ADVOCATES/CLIENT BILL OF COSTS.

AND

IN THE MATTER OF TAXATION BETWEEN ADVOCATES/CLIENT IN ELDORET

CMC CIVIL SUIT NO. 25 OF 2013

SCALE & SOFTWARE (K) LTD.....PLAINTIFF

VERSUS

LOMSON ENTERPRISES (K) LTD.....DEFENDANT

MICHAEL K. CHEMWOK T/A CHEMWOK & CO. ADVOCATES.....APPLICANT

VERSUS

LOMSON ENTERPRISES (K) LTD.....RESPONDENT

R U L I N G

The applicant herein filed the Bill of Costs dated 19th January 2015. The applicant further filed a Notice of Motion to amend the same on 24th July 2015. The said amendment was to do with the title of the suit. The claimant claims that he received a down payment of Kshs. 20,000/= to facilitate payments in court. He produced an exhibit, marked as MKC2 as proof of the same. It was initially titled CMC CIVIL SUIT NO. 25 OF 2013 and the amendment sought was to have it indicated as HCC CIVIL SUIT NO. 25 OF 2013.

The applicant further claims that the 2nd defendant called into his office with the plaintiff and instructed him to take up the matter. The applicant produced a copy of the summons and plaintiff marked as MKC 3(A) and (B) respectively, in support of the claim.

The respondent, vide an affidavit dated 6th April 2016 denied that he had instructed the applicant to represent him in the suit. The respondent further, vide his written submissions dated 18th February 2019 and filed on the 19th of February 2019, denied ever retaining the applicant in any legal suit.

The applicant however, claims that he was duly instructed and given all the briefs thereto by the respondent.

In this matter, the applicant has called upon the court to determine whether there was a retainer between him and the respondent, and as such there is only one issue for determination before this court, and that is whether the applicant herein was retained by the respondents.

The Black's Law Dictionary defines the word retainer as: -

“In the practice of law, when a client hires an attorney to represent him, the client is said to have retained the Attorney. This Act of employment is called the retainer. The retainer agreement between the client and the Attorney sets forth the nature of services to be performed, costs, expense and related matters.”

In the case of **Njeru Nyaga & Co. Advocates Vs George Ngure Kariuki**, High Court of Kenya at Nairobi (Commercial & Admiralty Division) Case No. 723 of 2012 the learned Judge said and I quote: -

“This word retainer has attracted serious judicial toiling and rending of minds in a bid to assign it a meaning within the provisions of the Advocates Act, probably because of the special position the word occupies in the advocate-client relationship. Although the present case does not fall under Section 51(2) of the Advocates Act, the innumerable previous courts’ rendition on the phraseology...where the retainer is not disputed...provide the content of the term “retainer”. “Retainer” in the wider sense entails the instructions by a client or a client’s authorization for a lawyer to act in a case or a fee paid to an advocate to act in a matter during a specified period or a specified matter, or a fee paid in advance for work to be performed by the lawyer in the future. See the BLACK’S LAW DICTIONARY, 9TH EDITION. The appropriate sense of the word “retainer” as used in the Advocates Act and which is relevant to this application was aptly provided by Waweru J and Ochieng J in the cases of NBI HC MISC APP NO 698 OF 2004 A.N. NDAMBIRI & CO ADVOCATES v MWEA RICE GROWERS MULTIPURPOSE CO-OP LIMITED, and OWINO OKEYO & CO ADVOCATES v FUELEX KENYA LIMITED [2005] eKLR, respectively.

Waweru J further stated that;

‘My understanding of the term “retainer” as used in section 51(2) of the Advocates Act is instructions to act in the matter in which the costs have been taxed. I do not, with respect, subscribe to the view that “retainer” means an agreement in writing as to the fees to be paid. Needless to say, where there is such agreement, taxation would hardly be necessary. In the circumstances I find that there is no dispute as to retainer.’

Perusal of the submissions by both parties and the exhibits thereto shows that the applicant indeed represented the respondent in Eldoret CMCC No. 25 of 2013 as the firm of the applicant were on record for the respondents herein. It’s vivid therefore, that the applicant was retained by the respondent.

This court won’t go into the substance of the Bill of Costs, since it is the mandate of the Deputy registrar to tax the same. I therefore direct that this matter be mentioned before the Deputy Registrar for compliance.

Dated and delivered at Eldoret this 23rd day of July 2019

S. M. GITHINJ

JUDGE

In the Presence of:

Ms Chebotibin for the Applicant

and absence of Mr. Too for the Respondent

S. M. GITHINJ

JUDGE