



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL AND TAX DIVISION**

**MISCELLANEOUS APPLICATION NO. 125 OF 2019**

**STEVEN MUREGI CHEGE T/A**

**S.M CHEGE & COMPANY ADVOCATES.....APPLICANT**

**-VERSUS-**

**HELLANA N. MUNGAI.....RESPONDENT**

**RULING**

This ruling relates to a Notice of Motion application dated 19<sup>th</sup> February 2019, pursuant to **Sections 1A, 1B and 3A of the Civil Procedure Act, Cap 21 and section 51 (2) of the Advocates Act Cap 16 Laws of Kenya**. The Applicant herein seeks orders:

- a) That this Honourable Court be pleased to enter Judgement for the sum of Ksh. 295,575/- being the Taxed costs on 2<sup>nd</sup> October 2018 as per the attached certificate of taxation;***
- b) That the Applicant be awarded interest on the Judgment sum from the date of taxation (2<sup>nd</sup> October 2018) up to the date of payment;***
- c) That the Applicant be awarded the costs of this application.***

**RESPONDENT'S REPLYING AFFIDAVIT**

The application was opposed vide a replying affidavit dated 14<sup>th</sup> May 2019, sworn by the Respondent herein (**Hellena N. Mungai**). She averred that the Application is fatally defective, incompetent, misconceived, bad in law and without merit as;

- a) The Application seeks for entry of judgment for an erroneous sum;***
- b) She had over paid the Advocate and he is seeking refund of the excess legal fees;***
- c) The bill of costs had been rectified and now taxed at Ksh 74,090.00;***
- d) The total payment which she made and was duly received by the Advocates was Ksh 89,000.00 whereby Ksh 40,000.00 was paid cash and not receipted and Ksh 49,000.00 was paid by way of Mpesa.***

As shown by annexed copies of correspondence outlining the amounts paid and Mpesa statement marked **HNM1**.

According to the Respondent the Applicant drew Bill of Costs at **Ksh 366,655.20** /- and it was taxed at Ksh 74,090/- with Ksh 292 575.20/- taxed off. It is just and fair that credit is given to her for total cash paid of Ksh 89,000/- and the Applicant to refund him the amount of Ksh 14.910/-

That in response to **paragraph 3 and 4** of the supporting affidavit, she stated that the Bill of Costs which had been drawn and presented for taxation had failed to give credit for even a single cent which she had paid to the Advocate and similarly in the application the Advocate has failed to give credit for the sums paid.

**DETERMINATION**

The Court considered the pleadings and submissions filed which are replica of the content in pleadings.

The application for entry of judgment of 20<sup>th</sup> February 2019 has annexed the Supporting Affidavit by Mr Steven Muregi Chege t/a S.M. Chege Advocates which confirms legal services rendered to the Respondent Ms Hellen N. Mungai with regard to suit property **Dagoretti/Kinoo/2466**. There is also attached the Advocate/Client Bill of Costs 6<sup>th</sup> December 2016 at Ksh 366,665.20/-

There is Certificate of Taxation by Deputy Registrar; Mr. S. Opande of 22<sup>nd</sup> October 2018 for Ksh 292,575.20/- There is a demand letter of 7<sup>th</sup> November 2018 to the Respondent's Advocates; Messrs Moses Odawa & Company Advocates for payment/settlement of Ksh 292,575.20/-.

The Respondent's Replying Affidavit gives contrary view to the Applicant's claim. Attached is a letter dated 26<sup>th</sup> April 2019 from Ms Joyce K. Mshila of S.M. Chege Advocates confirming that the Bill of Costs was taxed at Ksh 74,090/- and not Ksh 292,575.20/- and no payments were received in the absence of which the instant application proceeded for hearing.

The Respondent's claim can only be buttressed by the presentation in Court of the Amended/reviewed Certificate of Taxation. Further, except for annexures of Mpesa payments and receipt of payment of Ksh 5,000/- as disbursements from the Applicant/Advocate law firm, proof of any other payments is not confirmed nor the specific payments in the Mpesa documents that relate to payment of legal fees to the Applicant Advocate highlighted.

There is no review and/or appeal to the certificate of taxation and/or the Deputy Registrar's taxation and taxed Bill. This Court lacks the advantage from availability of the Ruling on Taxation and/or correction/amendment thereof and therefore cannot look beyond/behind the valid regular and legal certificate of taxation presented.

In the absence of conclusive and consistent evidence on the taxed amount of the Bill of Costs, and any review and/or appeal to the taxation proceedings and outcome as prescribed by **Paragraph 11** of Advocates Remuneration Order, this Court shall rely on the Certificate of Taxation filed in Court until an amended/corrected one is availed and The Respondent's proof of amounts paid to the Applicant availed to court.

#### **DISPOSITION**

- 1. Judgment is entered on the certificate of taxation of 22<sup>nd</sup> October 2018 for Ksh 292,575.20 cts interest and costs of the application against the Application;**
- 2. Temporary stay of execution for 30 days from the date of delivery of Ruling; is granted to the Respondent to avail Court order, Court Ruling and/or proceedings confirming amendment/correction of the instant certificate of taxation of 22<sup>nd</sup> October 2018; and**
- 3. Documentary proof availed to Court of actual payments made towards defraying and/or settlement of legal fees.**
- 4. In default then extension of the judgment and to proceed.**

**DELIVERED SIGNED & DATED IN OPEN COURT ON 20<sup>TH</sup> SEPTEMBER 2019.**

**M.W.MUIGAI**

**JUDGE**

**IN THE PRESENCE OF;**

**ADVOCATE FOR APPLICANT**

**MR. ODAWA FOR RESPONDENT**

**JASMINE - COURT ASSISTANT**