



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS APPLICATION NO. 223 OF 2014 CONSOLIDATED

WITH MOMBASA HIGH COURT MISCELLANEOUS

APPLICATION NO. 230 OF 2014

V. CHOKAA & CO. ADVOCATESAPPLICANT

VERSUS

COUNTY GOVERNMENT OF MOMBASA as a successor of

MUNICIPAL COUNCIL OF MOMBASA.....RESPONDENT

RULING

1. Mombasa High Court Miscellaneous Application No. 223 of 2014 was consolidated with Mombasa High Court Miscellaneous Application No. 230 of 2014 on 9th October, 2017, with the lead file being the one for Mombasa High Court Miscellaneous Application No. 223 of 2014.
2. The two applications are dated 23rd January, 2017. Ms. Kimuli, Learned Counsel for the applicant submitted that in Mombasa High Court Miscellaneous Application No. 223 of 2014, the applicant was seeking orders for Judgment to be entered against the respondent for the sum of Kshs. 291,292.00 with interest at 14% per annum and costs. She stated that a certificate of taxation dated 18th August, 2016 was attached to the applicant's supporting affidavit sworn on 23rd January, 2017.
3. In Mombasa High Court Miscellaneous Application No. 230 of 2014, Counsel for the applicant indicated that she was seeking entry of Judgment in the sum of Kshs. 420,877.00 with interest at 14% per annum and costs. She relied on the certificate of taxation dated 18th August, 2016 attached to the applicant's supporting affidavit sworn on 23rd January, 2017.
4. Mr. Kiti, Learned Counsel for the respondent opposed the applications and relied on the grounds of opposition dated 9th October, 2017 contained in each of the two files. In his view, there was no legal basis for the present applications as fresh causes should have been filed. He submitted that the applications herein should not have been filed in the same files which the Deputy Registrar dealt with when taxing the bills of cost. This was for the reason that the applications that she dealt with are spent and cannot be converted into suits from which Judgments can be obtained.
5. Mr. Kiti cited Kisii Environment and Land Miscellaneous Application No. 247 of 2012, **Cyrus Minda t/a Minda & Co. Advocates vs Yunes Kerubo Oruta**, where the Judge held on page 2, that a Miscellaneous Application upon which a Deputy Registrar taxed the bill of costs became spent and could not form the basis of a suit.
6. In response to the foregoing submissions, Ms. Kimuli submitted that the decision relied upon by Counsel for the respondent was not binding to this court. She urged the court to look at the merits of the applications and make a decision guided by the law. She prayed for the applications to be allowed.
7. I have perused the proceedings before the Deputy Registrar and noted that the bills of cost were taxed on 15th of August, 2016 by consent of the parties hereto.
8. Sections 48 and 49 of the Advocates Act require that a suit be filed and a decree issued before an Advocate can execute for his costs. Section 51(2) of the said Act provides that 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 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 a Judgment be entered for the sum certified to be due with costs.

9. The present applications are anchored on the provisions of Section 51(2) of the Advocates Act. It is therefore my finding that the applicant has properly moved this court for entry of Judgment in the same files wherein the Deputy Registrar taxed the bills of cost. There is no dispute as to the retainer herein and no reference has been filed and none of the two bills of cost have been set aside. I am persuaded by the decisions in **Gachiri Kariuki and Company Advocates vs Invesco Assurance Company Limited** [2014] eKLR and **Lubullelah and Associates Advocates vs N.K. Brothers Ltd.** [2014] eKLR.

10. I am not persuaded by the authority cited by Counsel for the respondent that the applicant should have filed fresh suits to recover his costs on applications that are clearly grounded on the provisions of Section 51(2) of the Advocates Act.

11. The sum total of the foregoing is that I allow the said applications and make the following orders:-

(i) In Mombasa High Court Miscellaneous Application No. 223 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 291,292.00, with interest at 14%. Costs are awarded to the applicant; and

(ii) In Mombasa High Court Miscellaneous Application No. 230 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 420,877.00, with interest at 14%. I also award costs to the applicant.

It is so ordered.

DELIVERED, DATED and SIGNED at MOMBASA on this 6th day of April, 2018.

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. P. Magolo holding brief for the applicant

Mr. Masila holding brief for Mr. Mwangunya for the respondent

Mr. Musundi - Court Assistant