



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS APPLICATION NO. 232 OF 2014

CONSOLIDATED WITH MOMBASA HIGH COURT

MISCELLANEOUS APPLICATION NO. 233 OF 2014

V. CHOKAA & CO. ADVOCATES.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF MOMBASA as a successor of

MUNICIPAL COUNCIL OF MOMBASA.....RESPONDENT

RULING

1. Mombasa High Court Miscellaneous Application No. 232 of 2014 was consolidated with Mombasa High Court Miscellaneous Application No. 233 of 2014 on 11th October, 2017, with the lead file being the one for Mombasa High Court Miscellaneous Application No. 232 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. 232 of 2014, the applicant was seeking orders for Judgment to be entered against the respondent in the sum of Kshs. 34,906/= with interest at 14% per annum and costs. She stated that a certificate of taxation dated 10th January, 2017 was attached to the applicant's supporting affidavit sworn on 23rd January, 2017.
3. In Mombasa High Court Miscellaneous Application No. 233 of 2014, Counsel for the applicant indicated that she was seeking entry of Judgment against the respondent in the sum of Kshs. 62,845/= with interest at 14% per annum and costs. She relied on the certificate of taxation dated 10th January, 2017 attached to the applicant's affidavit sworn on 23rd January, 2017.
4. Counsel for the applicant submitted that the certificates of taxation have not been set aside or the retainer disputed as those are the situations which can lead to dismissal of applications such as the present ones. She relied on the case of **Gachiri Kariuki & Co Advocates vs Invesco Insurance Co. Ltd** [2014] eKLR, where the Judge held that once an Advocates' costs have been taxed and a certificate issued, the only bar to the entry of Judgment is if there is a dispute as to the retainer. She cited the provisions of rule 13(3) of the Advocates Remuneration Order which states that such a claim should be done through a miscellaneous cause. Ms Kimuli therefore argued that the applications were properly before the court. She prayed that they be allowed with costs and interest.
5. Mr. Mwangunya, Learned Counsel for the respondent opposed the applications and relied on the grounds of opposition dated 11th October, 2017 contained in each file. In his view, there was no legal basis for the present applications as they were filed in a vacuum. 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.
6. He cited Kisii Environment and Land Miscellaneous Application No. 247 of 2012, **Cyrus Minda t/a Minda & Co. Advocates vs Yunes Kerubo Oruta**, to show that the miscellaneous applications became spent after taxation and the applicant should have filed fresh suits. He prayed for the applications to be dismissed.
7. I have perused the proceedings before the Deputy Registrar and noted that the bills of costs were taxed on 24th October, 2016 and rulings thereof delivered on 15th December, 2016.
8. Inasmuch as 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, no reference has been filed and none of the certificates of costs 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. 232 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 34,906/= with interest at 14%. Costs are awarded to the applicant; and

(ii) In Mombasa High Court Miscellaneous Application No. 233 of 2014, I enter Judgment in favour of the applicant as against the respondent in the sum of Kshs. 62,845/= 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