



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION CAUSE NO. 153 OF 2013**

**KAGUCIA & COMPANY ADVOCATES..... APPLICANT**

**-VERSUS-**

**JOSEPH PATRICK MUKIRI & 5 OTHERS.....RESPONDENT**

**RULING**

1. By an application dated the 23<sup>rd</sup> September 2016, the Applicant, Kagucia & Company Advocates sought for orders that certified costs in the sum of Kshs.458,443/= arising from the Advocate/Client Bill of Costs filed on the 17<sup>th</sup> April 2013 taxed and certified on the 1<sup>st</sup> August 2016 be adopted as judgment of the court under the provisions of **Section 51(2) of the Advocates Act, Paragraph 7 of the Advocates Remuneration Rules, and Order 51 rule 1 of the Civil Procedure Rules.**

2. The applicant further seeks interest at 14% per annum on the costs and disbursements **one month** from the date of delivery of the bill to the respondent upto date of payment.

The application is grounded on the fact that no objection or Reference against the taxation has been filed since the bill of costs was taxed.

3. In opposing the application, a Replying Affidavit sworn by Geoffrey Kimani Mwaura one of the Respondents on the 2<sup>nd</sup> August 2017, was filed.

The reply raises no issues as to retainer, but it is averred that there was an agreement on costs, that each of the respondents was to pay Kshs.15,000/=, and that at the time of filing this application, a sum of Kshs.48,500/= out of the would have been Kshs.56,500/= had been paid. Both parties filed written submissions on the application.

4. The primary suit subject of the costs is HCC No.222 of 2009. It is admitted that part payment had been made of the costs, and failure by the respondents to make full payment necessitated filing of the Advocate-client Bill of Costs, that upon taxation resulted to the certificate of costs in the sum of Kshs.453,443/=.

5. The applicant denies the existence of a purported agreement on costs that each respondent was to pay Kshs.15,000/=, citing a letter by the Advocates dated 13<sup>th</sup> February 2010, the advocate termed it as gross misrepresentation as it is stated as **“the status of payment to date, on account of our costs.”** It is contended that payments of Kshs.15,000/= were deposits towards legal fees.

6. It is therefore the applicant's submissions the said letter to the respondents talked of deposits and was thus limited to deposits only, and this is buttressed by the respondents averment that the respondents pleaded for “re-negotiation.”

7. In response to the above submissions, the respondents referring to the letter stated that they would not have engaged the Advocate's services without an agreement on the fees if the advocates had not been bound by the terms of the purported agreement. The Respondent aver that they are willing to pay the balances stated in the letter dated 13<sup>th</sup> February 2010, above cited. No submission on the Bill of Costs or the certificate of costs was tendered by the Respondents.

8. In my considered opinion, two issues arise for determination:

***1. Whether there was a retailer agreement on fees between the advocate and the clients.***

***2. Whether the respondents are bound to pay the Advocates costs as stated in the certificate of costs dated the 1<sup>st</sup> August 2016 from which no objection or reference has been lodged.***

9. On the **first issue**, I have considered the advocates letter to the respondents dated 15<sup>th</sup> February 2010. It is clearly stated

*“The status of payments, todate, on account of our costs is as set out below. Payments by respective plaintiffs”*

The letter continues to state that:

*“--most of the plaintiffs have not met even one-half (½) of the deposit requisitioned ---”*

Unless the respondents, who are duly represented by counsel do not understand the plain and clear meaning of “**a deposit**” on legal fees, I do not see how the said letter can be construed to be an agreement on fees. If there was such agreement on fees, it is well founded under **Section 45 of the Advocates Act** but non was exhibited before this court.

10. I am afraid I find no existence of such agreement on costs. **A deposit in plain language means part payment of legal fees, whether agreed or to be taxed.** I cannot find any other interpretation or meaning to the letter under reference. The respondents have not assisted the court in this regard as no submission to buttress their contention, that the said letter was or ought to be construed as an agreement on fees was tendered. Failure to attach such agreement on fees can only mean one thing. That there was no agreement on fees.

I find no merit in that contention and therefore no agreement on fees between the advocate and the respondents.

11. **On the 2<sup>nd</sup> issue**, it is trite that once a taxing Master has taxed a bill of costs and issues a certificate of costs, where there is no objection or reference filed against the ruling, and the certificate of costs has not been set aside or altered, the court, upon application has no option but to enter judgment in terms of the certificate of costs. The certificate of costs is final as to the amount certified as costs – See **Lubulellah & Associates Advocates -vs- N.K. Brothers Ltd (2014) e KLR, HC NUS 486 OF 2012 E.W. Njeru & Co Advocates -vs- Zakhem Construction (K) Ltd, Among Others.** Once again, the Respondents have not offered any submissions on this aspect.

I therefore find that there being no objection or reference filed in opposition to the taxed bill of costs, the certificate of costs in the sum of Kshs.458, 443/=, is final and ought to be adopted as a judgment of the court.

12. Accordingly, I allow the Notice of motion application dated 23<sup>rd</sup> September 2016 in the following terms:

*1. That judgment is hereby entered in favour of the Applicant/Advocate against the Respondents/clients in the sum of Kshs.458,443/=plus further disbursements, and court fees incurred one month after the certificate of costs was issued and delivered to the respondents, thus from 1<sup>st</sup> September 2016 with interest at 14% per annum on the certified costs, further disbursements and court fees until payment in full.*

*2. Costs of this application shall be to the Applicant/Advocate.*

Dated, signed and delivered this 5<sup>th</sup> Day of July 2018.

J.N. MULWA

JUDGE