



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC APPLICATION NO. 51 OF 2015

IN THE MATTER OF ADVOCATES ACT 16 LAWS OF KENYA

AND

IN THE MATTER OF ADVOCATES REMUNERATION ORDER

AND

IN THE MATTER OF ADVOCATE -CLIENT BILL OF COSTS

BETWEEN

GIDEON ONGONO BARONGO

T/A BARONGO OMBASA ADVOCATE).....APPLICANT

VERSUS

JIANGIXI ZHOGNMEI ENGINEERING CONSTRUCTION & CO. LTD.....RESPONDENT

RULING

The applicant has filed the motion dated 5/8/2015 seeking to tax Advocate/client bill of costs which is already on record. The Applicant acted on behalf of the client in Civil suit No 357 of 2014 at the Industrial Court. That fact seemed not to be contested by the respondent.

The only argument by the respondent is the objection by way of preliminary point of law namely that

“The application is an affront to the provisions of section 49 of the Advocates Act Cap 16 of the Laws of Kenya as a claim under the said provision has to be by way of a substantial suit commenced by a plaintiff”

The same has been opposed by the applicant citing Section 48(3) of the Advocates Act which states

“ Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.”

In the present application, there is no dispute that the applicant acted for the Respondent in a set of matters. Despite this there was disagreement on his fees hence withdrawal of the instructions.

Contrary therefore to the perspective of the respondent the afore quoted Section does not envisage a

situation where the advocate has to file suit. It gives greenlight to the Advocate to proceed to demand and tax his bill without following the provisions of Section 49.

For the foregoing reasons the preliminary objection dated 11/9/2015 is dismissed with costs to the Applicant.

Delivered on 15th day of March 2017.

H.K. CHEMITEI

JUDGE

In the presence of;

Teti for holding brief for Barongo for Applicant

No appearance for for the Respondent

Kirong – Court Assistant