



IN THE HIGH COURT OF KENYA

AT MURANG'A

MISC CIVIL APPLICATION NO 104 OF 2013

MURI MWANIKI & WAMITI, ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

KENYA ORIENT INSURANCE LIMITED.....CLIENT/RESPONDENT

R U L I N G

1. This ruling concerns the **notice of motion dated 30/05/2014** by which the Advocate herein, Muri Mwaniki & Wamiti Advocates, seeks against the Client, Kenya Orient Insurance Limited, three main orders –

(a) That the order of 14/02/2014 herein by the Taxing Officer be set aside. By that order the Client's application by **notice of motion dated 30/01/2014** was allowed and the Advocate's advocate/client bill of costs dated 31/10/2013 struck out upon the grounds that the Advocate did not attend to prosecute the bill of costs, and further that in any event the Advocate had already been paid his full costs.

(b) That the Advocate be granted unconditional leave to defend the Client's aforesaid notice of motion dated 30/01/2014, and the replying affidavit already filed in response thereto be deemed to be duly filed and served.

2. The grounds for the application appearing on the face thereof include –

(a) That the Client's application was served upon the Advocate on 31/01/2014 (a Friday), only 2 days before the hearing on the following Monday 03/02/2014. There was thus not sufficient time to prepare, file and serve the replying affidavit.

(b) That in any event the matter (both the taxation and the Client's application) was not listed in the cause list for 03/02/2014.

There is a supporting affidavit sworn by one Eric Thige, an advocate in the Advocate's firm.

3. The Client opposed the application by grounds of opposition dated 1st and filed on 02/09/2014. Those grounds include –

(a) That the Client's **notice of motion dated 30/01/2014** was properly before the Taxing Officer and was called out in the normal court practice on 03/02/2014, and that there was no attendance by, or appearance for, the Advocate.

(b) That no good reason has been advanced for the Advocate's failure to attend court on

03/02/2014.

(c) That the Advocate was not diligent.

(d) That there was no good reason advanced to warrant the setting aside of the order of 14/02/2014.

I cannot find on the record a replying affidavit.

4. The Advocate filed written submissions in prosecution of the application at hand on 14/10/2014. I have read and considered those submissions. There was no appearance for the Advocate at the oral hearing of the application on 28/03/2017.

5. On its part the Client does not appear to have filed written submissions. But oral submissions were made on its behalf on 28/03/2017. I have considered those submissions too.

6. There are two undisputed facts in this case upon which the application at hand will turn –

(a) The Advocate's advocate/client bill of costs, though fixed for taxation on 03/02/2014, was not listed.

(b) The Client's application by notice of motion dated 30/01/2014 scheduled for hearing on 03/02/2014 was served only on the previous Friday 31/01/2014; the intervening period was a weekend, and clearly the Advocate was not given enough time to respond.

7. It is true that the Advocate should have attended the Taxing Officer on 03/02/2014 and follow up his matter upon finding it not listed. But that does not alter the fact that the Client's application, upon which the advocate/client bill of costs was struck out, should not have been heard on 03/02/2014 as the Advocate had not been given at least 3 clear days from service within which to respond to the application.

8. This court therefore has no hesitation at all in allowing the Advocate's notice of motion dated 30/05/2014. The order of the Taxing Officer of 14/02/2014 is hereby set aside. The effect of this is that the Advocate's advocate/client bill of costs dated 31/10/2013 is hereby reinstated.

9. Further, the Client's notice of motion dated 30/01/2014 shall be heard afresh by the Taxing Officer, and the Advocate is hereby granted unconditional leave to defend that application. To that end, the Advocate's replying affidavit sworn by one Martin G. Mwaniki on 17th and filed on 19th March 2014 is deemed to be duly filed and served. It is so ordered.

10. Parties shall bear their own costs of this present application.

DATED AND SIGNED AT MURANG'A THIS 15TH DAY OF JUNE 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 16TH DAY OF JUNE 2017