



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISCELLANEOUS CAUSE NO. 78 OF 2016

MUEMA KITULU & CO. ADVOCATES.....APPLICANT

VERSUS

KENYA DEPOSIT INSURANCE CORPORATION.....RESPONDENT

RULING

1. The matter for determination is the Preliminary Objection dated 7th April 2016. The said objection is in the following terms;

“TAKE NOTICE that the Respondent will raise a Preliminary Objection on a point of law at the earliest opportunity in relation to the Applicant’s Bill of costs dated 23rd February, 2016, on the following ground:-

1. The Honourable Deputy Registrar lacks jurisdiction to proceed with taxation of costs in a matter instituted and pending before the Court of Appeal?.

2. It was the client’s contention that the outstanding legal fees, if any, ought to be taxed before the Court of Appeal.

3. In support of the Notice of Preliminary Objection the client provided documents relating to the following cases;

a) Richardson & David Ltd Vs KDLC & Central Bank of Kenya Hccc No. 482 of 2015;

b) Kenya Deposit Insurance Corporation Vs Hassan Ahmed Abdul Hafedi Zubedi & 5 others Hccc No. 467 of 2015; and

c) Nairobi KDIC Vs Richardson & David Ltd & Another Civil Application No. NAI. 285 of 2015.

4. According to the client, they were represented by the advocate until the High Court rendered a Ruling which was unfavourable to the client. At that point, the client instructed another Law Firm to act for them, in the appeal arising from the decision of the High Court.

5. The client also stated that the Bill of Costs raised by the Law Firm was in relation to the services rendered when there were proceedings at the Court of Appeal.

6. The following statement encompasses the client's understanding;

“Part V of the Court of Appeal Rules of 2010 deals with taxation of costs of proceedings filed and prosecuted before that court. In particular, Rule 111 exclusively vests upon the Registrar of the Court of Appeal the jurisdiction to tax costs arising out of any application or appeal from the Court of Appeal as between party and party?.

7. Of course, the Bill of Costs herein is not of party and party: it is an Advocate/Client Bill of Costs.

8. According to the client, there is an agreement with the advocates, regarding the fees which the advocates would charge for services rendered.

9. The client then exhibits a memo dated 4th March 2015, which was in relation to the following services;

“...obtain a Court Order under a certificate of urgency, restraining the former Dubai Bank Ltd (IL) directors from transferring and/or dealing with their properties in any form whatsoever with third parties...?”

10. On a *prima facie* basis, the memo appears to be in connection with proceedings which the client was instituting, at the High Court.

11. Considering that the Preliminary Objection refers to a matter instituted before the Court of Appeal, it would appear that the memo dated 4th March 2015 had no *nexus* with the Advocate/Client Bill of costs dated 23rd February 2016.

12. Similarly, Hccc No. 482 of 2015 and Hccc No. 467 of 2015, do appear to have no *nexus* with the proceedings instituted and pending before the Court of Appeal. I say so because both those cases were instituted at the High Court.

13. But then again, a close reading of the Bill of Costs reveals that the Advocate/Client Bill of Costs in issue, was filed in relation to an appeal lodged by the client, after the High Court had delivered its Ruling in Hccc No. 482 of 2015. The point I am making is that whilst the Preliminary Objection is premised on the ground that the Bill of Costs was in relation to proceedings, Instituted and pending at the Court of Appeal, it does appear that the appeal had some connection with the matter which was originally instituted at the High Court.

14. Of course the appeal itself was instituted at the Court of Appeal.

15. If, as the client says, the advocate herein was not instructed in relation to the appeal, it would be necessary for the advocate to discharge the *onus* of proving the particulars of the retainer agreement in relation to the services which the advocate provided before the Court of Appeal.

16. It is not lost on me that the client said that the Law Firm which was instructed to handle the appeal was **TRIPLE OK LAW LLP ADVOCATES**.

17. But the client also asserts that the Law firm herein (**MUEMA KITULU & Co. ADVOCATES**) was paid in full.

18. It therefore appears to me that the Law firm of **MUEMA KITULU & Co. ADVOCATES** rendered some services on behalf of the client, before that firm was replaced.

19. In relation to any services which were rendered before the Court of Appeal, the Taxing Officer who has the requisite jurisdiction to tax the party and party Bill of Costs, as well at the Advocate/Client Bill of Costs is the Registrar of the Court of Appeal.

20. Pursuant to Rule 111 (3) of the Court of Appeal Rules, the registrar of the Court of Appeal is clothed with authority to apply the Advocates Remuneration Order which governs the proceedings before the High Court, if it becomes necessary to do so, when determining the quantum of costs applicable in particular instances.

21. For example, if the Court of Appeal awards costs for the proceedings before it and also for the proceedings before the High Court, the Taxing Officer of the Court of Appeal will tax the entire Bill of Costs. However, in respect to work done when the case was before the High Court, the Taxing Officer would apply the scale governing proceedings before the High Court.

22. In the result, the Law Firm erred when it filed the Advocate/client Bill of Costs at the High Court, when the Bill relates to services rendered at the Court of Appeal.

23. Accordingly, the Preliminary Objection is sustained.

24. However, I am also obliged to make it clear that the fact that the proceedings were still pending at the Court of Appeal, was not a bar to the filing of the Advocate/Client Bill of Costs.

25. It is only the Party and Party Bill of Costs that cannot be filed until the Court has determined the matter, and given an order on the issue of costs. But even in party and party costs, the court may sometimes give interlocutory orders on costs, which could, if expressly stated, allow the Bill of Costs to be taxed whilst the case had not been determined in its entirety.

26. I now order that Advocate/Client Bill of Costs be struck out forthwith. The Applicant will pay to the Respondent the Costs of the Preliminary Objection.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd day of November 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Ayora for Kitulu for the Applicant

Owiti for the Respondent

Collins Odhiambo – Court clerk.