

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO. 98 OF 2013

IN THE MATTER OF AN ADVOCATE

AND

IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER, 2006

BETWEEN

OUMA NJOGA & COMPANY ADVOCATES APPLICANT

VERSUS

BONN MIRINDO

T/A SKYLARK INVESTMENTS CO. LTD. RESPONDENT

RULING

The Advocates Bill of costs herein was taxed on 26th August 2013 and a Certificate of Costs thereto signed by the taxing officer on 3rd September 2013, but before that on 29th August 2013 pursuant to Clause 11(1) Counsel for the Client had written to the taxing officer seeking for reasons for the taxation on all the items. The reasons were duly furnished to him by a letter dated 16th September 2013. Subsequently the Advocate filed the Notice of Motion dated 13th September 2013 seeking that the taxed costs be deemed a judgment. The record shows that on 11th October 2013 Counsel for the Client filed a Chamber Summons seeking orders that the amounts awarded by the Deputy Registrar be disallowed or the entire award be set aside and the matter be referred to a different taxing officer. That Chamber Summons is dated 10th October 2013. By then the Advocate's Notice of Motion had already been fixed for hearing on 24th October 2013. When the Advocates went before Chemitei J on that day Counsel for the Client indicated he had a reference whereupon the judge directed the matter be mentioned on 31st October 2013 and ordered that submissions be filed. On 31st October 2013 the matter was again adjourned to 4th December 2013 but come that day the matter was referred back to the registry. On 29th October 2013 and 16th January 2014 respectively the parties filed their submissions on the reference but before the reference could be determined Counsel for the Client filed an application to cease acting - see Chamber Summons dated 31st March 2014. On the other hand on 7th October 2015 the Advocate filed a Notice of Motion dated 7th September 2015 to amend his application dated 13th September 2013. However the record shows that come 3rd December 2015 Mr. Njoga, the Advocate/Applicant and Mr. Oyuko the Advocate for the Client/Respondent appeared before my brother Chemitei J and recorded a consent allowing the application dated 13th September 2013 with a stay of execution for 14 days. It was also directed that the matter was to be mentioned on 16th December 2015 and when the Advocates failed to attend on that day the matter was referred to the registry.

The application dated 13th September 2013 which was allowed by consent effectively entered judgment in favour of the Advocate for the taxed costs and this Court is at a loss as to why the same would then be fixed for hearing of the reference. Had the consent judgment entered on 4th December 2015 been brought to its attention this Court would not have dealt with the matter further because as things stand there is nothing remaining upon which this Court can make a determination judgment having been entered for the Advocate in terms of the certificate of costs. The subsequent proceedings have so to speak been in vain as the reference was overtaken by the consent judgment. Each party shall bear its costs. It is so ordered.

Signed, dated and delivered at Kisumu this 3rd day of November, 2016

E. N. MAINA

JUDGE

In the presence of:-

Mr. Mwamu for the Advocate/Applicant

N/A for the Client/Respondent

C/A: Serah Sidera