



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

**CIVIL CASE NO. 65 OF 2014**

**JOHN MATHIAKA KIMUNDU.....PLAINTIFF**

**VERSUS**

**LAWRENCE MWANGI**

**T/A LAWRENCE MWANGI & CO. ADVOCATES.....DEFENDANT**

**RULING**

1. By a Plaint dated the 27<sup>th</sup> August, 2014 the Plaintiff hereof John Mathiaka Kimundu sued Lawrence Mwangi t/a Lawrence Mwangi & Co. Advocates hereinafter referred as the Defendant sought an injunction restraining the Defendant from demanding for legal fees and/or executing against the Plaintiff arising from Miscellaneous Civil Application No. 100 of 2013, Nakuru and a declaration that the amount of legal fees of shs 200,000/= paid to the Defendant was sufficient and commensurate to the work done and further general damages for breach of clients Advocates agreement.
2. Together with the Plaint, the Plaintiff filed a motion under Order 40 rule 1 & 4 (1), Section 3A & 63( c) and (f) of the Civil Procedure Act and sought an order of temporary injunction to restrain the Respondent/Defendant from demanding legal fees and/or executing against the Plaintiff for legal fees arising from High Court Miscellaneous Civil Application No. 100 of 2013 at Nakuru pending the hearing and determination of this application. He further seeks a stay of proceedings in the said Miscellaneous Civil Application No. 100 of 2013 pending the hearing of the application.
3. The grounds upon which the application is based are as stated on the face of the application, but suffice to state one, that in June 2013 the Defendants filed a Bill of Costs against the Plaintiff that was allegedly taxed at Shs. 1,892,693.44 ex parte, and that the same has since been set aside. It is these taxed costs that the Applicant/Plaintiff seeks to have the Defendant restrained by this court from demanding or executing against the Plaintiff. The Certificate of Costs was issued on the 3<sup>rd</sup> October 2014.
4. In his Supporting Affidavit, the Plaintiff admits having retained the Defendant to act for him in a suit being **Nakuru HCCC No. 208 of 2009 – John Mathiaka Kimundu –vs- Agricultural Finance Corporation**. Pursuant to the said instructions the Defendant filed the suit together with an application where interim injunctive orders were obtained against the Defendant in the said suit. The Plaintiff alleges that he paid a sum of Kshs. 200,000/= towards legal fees to the Defendant, that he states was commensurate with the work the said firm of Advocates undertook.

5. On the 25<sup>th</sup> September, 2014 the Applicant filed a notice to act in person together with a notice to withdraw the suit. Following the said withdrawal of the suit, the Defendant then filed a Miscellaneous Civil Application No. 100 of 2013 being an Advocate-Client Bill of Costs on the 25<sup>th</sup> September, 2014 for a sum of shs. 1,892,693.44 which sum was duly taxed by the taxing master on the 19/3/2013 and a Certificate of Taxed Costs in the sum of shs. 1,892,693.44 issued on the 4<sup>th</sup> April, 2013. To challenge the taxed amount, the Plaintiff filed this suit by way of a plaint together with the application now under review.

6. The Respondent/Defendant upon being served filed a Statement of Defence on the 26<sup>th</sup> November 2014 stating that the said taxed costs were properly awarded and that the Plaintiff was adequately represented by his able Advocates in the Miscellaneous Civil Application No. 100 of 2013 that was an Advocate-Client Bill of Costs, and to the best of his knowledge, the taxed costs have not been set aside and in any event, the application has been overtaken by events. Parties agreed to dispose the Preliminary Objection by way of written submissions. However, the Applicant/Plaintiff did not file his submissions.

7. It is the Respondents submission that this suit and the application are incurably defective, incompetent, non starter, an abuse of the court process, is defective, made in bad faith and ought to be struck off together with the suit. In addition, he filed a Preliminary Objection and listed 27 points of law to the application. In a nutshell, the points of law raised are that the suit and the application are incompetent and against the clear provisions in the Advocates Act, Chapter 16 Laws of Kenya and the Advocates Remunerations Order, 1997 which are the only laws that govern the relationship between an Advocate and Client in matters related to Advocates fees. The Advocates also attack the procedure of bringing the said dispute to court by way of a Plaint.

8. The Advocates Act is an all inclusive and self-contained Act, and provides for dispute resolution in Advocate-Client fees. He has urged this court to strike out both the suit and the application.

9. I have considered the suit herein from which the application rises, the supporting affidavit and annexures thereto, together with the written submissions by both parties on the Preliminary Objection filed by the Respondent/Defendant.

In my view, this suit was brought against the Defendant to challenge the Certificate of Costs issued by this court in **HCC Miscellaneous Civil Application No. 100 of 2013** between the **Advocate Lawrence Mwangi t/a Lawrence Mwangi & Co. Advocates –vs- John Mathiaka Kimundu** arising from Nakuru HCCC No. 208 of 2009 which suit was withdrawn by the Plaintiff. The Advocates having not been paid their legal fees filed an Advocate-Client Bill of Costs under the said Miscellaneous Application for taxation. This is the proper procedure provided under the Advocates Act.

10. **Part IX, Section 51** states –

*(1) Every application for an order for the taxation of an Advocates Bill or for the delivery of such a bill, and the delivery up of any deeds, documents and papers by an Advocate shall be made in the matter of that Advocate.*

*(2) The Certificate of the Taxing Officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit ....”*

11. From the above, it is clear that such a Bill of Costs or challenge to the Bill so taxed or the Certificate of Costs as in this matter ought to be made in an application, in the matter of the Advocate by a Miscellaneous Application in this case, **HC Civil Miscellaneous Application No. 100 of 2013**. The Respondent, and Plaintiff in this suit ought to have filed a reference to the High

Court by way of an objection to the taxed costs instead of filing a suit against the Advocate as is the case here.

In the application under review, the Applicant seeks orders from this court to restrain the Advocates or his agents from demanding legal fees or executing for the certified costs against the Plaintiff by way of a temporary injunction pending hearing of this application. Part 11 of the Advocates Act does not envisage such prayers, as provided for under the Civil Procedure Rules and Act, Chapter 21, Laws of Kenya. An order of stay of execution or an injunction against execution of an Advocates Certificate of Costs and Judgment arising therefrom can therefore not be allowed under the Civil Procedure Rules.

12. In the case **HC Miscellaneous Civil No. 162 of 2006 – Orbit Chemicals Industries –vs- Otieno-Odek & Co. Advocates**, the Client had applied for an order of stay of execution against taxed costs by the Advocate. The court held that the client being dissatisfied with the Taxing Officer’s certification of costs, should have raised an objection to the taxation and seek for reasons for the ruling (*taxation*). It is only then that the court would exercise its discretion to stay execution alongside other prayers of setting aside the ruling on taxation. The party cannot invoke the provisions of the Civil Procedure Code. The same views were upheld in the matter of **Lubullella & Associate Advocates –vs- Psaranji Brokers in HCC Miscellaneous Civil Application No. 656 of 2012.**

13. This court has noted that the Applicant/Plaintiff has filed another application in **High Court Miscellaneous Civil Application No. 100 of 2013** – above referred to, seeking order of stay of execution of the taxed costs to the Advocate, and an order to set aside the ruling on taxation made on the 17<sup>th</sup> October, 2014. Needless to say, these multiple applications by the Applicant/Plaintiff hereof are, in my view, an abuse of the court process. The Respondent in his Preliminary Objection has urged that the application and the suit be struck off.

14. I fully concur with the sentiments expressed in **Bullen and Leake and Jacob’s Precedence of Pleadings 12<sup>th</sup> Edition page 148**, where scandalous pleadings and the term abuse of process is described as follows:

*“The term “abuse of the process of court” is a term of great significance. It connotes that the process of the court must be carried out properly, honestly and in good faith, and it means that the court will not allow its function as a court of law to be misused but will in a proper case, prevent its machinery from being used as a means of vexation or oppression in the process of litigation. It follows that where an abuse of process has taken place, the intervention of the court by way of stay of even dismissal of proceedings, although it should not be lightly done, yet it may often be required by the very essence of justice to be done.”*

15. Having made a finding that the suit and the application dated 17<sup>th</sup> October, 2014 are an abuse of the court process and without merit, I uphold the preliminary objection and proceed to strike out the application and the suit in its entirety.

The Applicant/Plaintiff is condemned to pay costs of the application and the suit.

**Dated, signed and delivered at Nakuru this 5<sup>th</sup> day of March, 2015**

**JANET MULWA**

**JUDGE**

**In the presence of:**

Mr. Ghai holding brief for Lawrence Mwangi for the Defendant/Applicant

Mr. Gatonye holding brief for Ambani for the Plaintiff/Respondent

Court clerk - Omondi