

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO. 52 OF 2015

OTIENO C.O. AYAYO & CO. ADVOCATESAPPLICANT/RESPONDENT

V E R S U S

JUNI AWITI ASIYO RESPONDENT/APPLICANT

RULING

By the Notice of Motion dated 5th June 2015 the Client/Applicant seeks orders that the Advocate/Respondent's bill of costs in Kisumu Misc. Application No. 51 of 2015 be consolidated with this application for purposes of this application; that the Advocate/Respondent be compelled to release to the Client/Applicant a sum of Kshs.5,572,596/= forthwith and that the Advocate's/Respondent's bills dated 4/5/2015 and fixed for taxation on 7/12/2015 be rescheduled and fixed for taxation within seven days and/or within any other period this honourable Court deems reasonable.

The grounds for the application are that the respondent acted for the applicant in the sale of certain properties in Kisumu whose purchase price amounted to Kshs.21,000,000/= which amount was paid to the respondent on 20/4/2015. However the Advocate has to date only released to the applicant a sum of Kshs.14,774,280/= together with a sum of Kshs.303,124/= which was paid by him to the relevant authorities as rates and rents. That this leaves a balance of Kshs.5,922,596/= which less the sum of Kshs.350,000/= due to the respondent as his fees leaves the balance due to the applicant as Kshs.5,572,596/=; That the respondent has totally refused or declined to release this balance but has instead filed his bill of costs for taxation and intentionally fixed the same for taxation on 7/12/2015 to frustrate the applicant. Further that the applicant needs this money to enable her to assist her ailing father get urgent specialized treatment abroad and it would only be fair and just that the advocate/Respondent be compelled to release the said sum to her. It is further contended that the respondent will not be prejudiced in any way as he can deduct 350,000/= as his legal fees.

The application is vehemently opposed and at paragraph 23 of the replying affidavit the respondent deposes that this balance is subject to a 10% agreed agency fees, Kshs.150,000/= agreed legal fees x 6 parcels of land sold; instructions to sub-divide x 14 parcels of land and instruction to watch brief in Kisumu Chief Magistrate's Criminal Cases 257/2013. He has at paragraph 24 denied that he deliberately fixed his bills for taxation on 7/12/2015 so as to frustrate the applicant and deponed that it was so as to give her enough time to attend the taxation as her representative denied she had powers to represent her. He further deposes that his costs/fees are more than the 350,000/= alleged. He also deposes that the applicant has tried to blackmail him by reporting the matter to the Advocates Complaints Commission.

The application was canvassed by way of written submissions. I have considered the rival submissions as well as all the material placed before me very carefully. In trying to show or demonstrate that the only amount due to the respondent as fees is Kshs.350,000/= Learned Counsel for the applicant has submitted extensively on that. I must say however that taxation of Advocates' bills of costs is the jurisdiction of the taxing officer in this case the Deputy Registrar. I cannot at this moment go into what is or is not the correct due to the respondent as fees and would leave it to the taxing officer who will do the taxation. Suffice it to say however that an Advocate has a right of lien over money or property of his client which right this Court would be taking away if it made an immediate release of the balance as sought. I do however agree with counsel for the applicant that the taking of a very far off date for the taxation is mischievous. The applicant now has an Advocate to represent her at the taxation and accordingly I direct that the Advocates appear before the Deputy Registrar on Wednesday 8th July 2015 with a view of taking a date for the taxation of the bills within 21 days or within a period as shall be agreed between the

advocates. The application is otherwise dismissed but given the nature of the relationship between the parties each shall bear their own costs. It is so ordered.

Signed, dated and delivered this 2nd day of July 2015

E. N. MAINA

JUDGE

In the presence of:-

Mr. Ayayo – Advocate/Respondent

Mr. Ken Omollo for Client/Applicant

Moses Okumu CC