



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 163 OF 2004 (O.S)

IN THE MATTER OF OTIENO YOGO & CO. ADVOCATES

AND IN THE MATTER OF THE ADVOCATES ACT

BETWEEN

DR. MARTIN ISANDACLIENT/APPLICANT

VERSUS

P. J. OTIENO

GEOFFREY D. O. YOGO

T/A OTIENO YOGO & CO. ADVOCATES.....ADVOCATES/RESPONDENTS

JUDGMENT

In the Originating Summons dated 13th September 2004 but filed herein on 10th November 2004 the Client/Applicant seeks orders under Section 51 of the Advocates Act, O.LII Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act that:-

- a) The said Advocates do pay to the Applicant the balance of all moneys held on account of the Applicant pursuant to the decree in Kisumu HCCC No. 6 of 2002 amounting to 406,000/=.**
- b) The said Advocates do pay to the Applicant interest at Court rates on all such sums of money as are due to the Applicant from the date of receipt of the sums by the Advocates to date of full payment.**
- c) The said Advocates do deliver up all papers and documents in their possession relating to Kisumu HCCC No. 6 of 2002.**
- d) The said Otieno Yogo & Co. Advocates do pay to the Applicant the costs of this Application.**

The O.S. which is supported by the affidavit of Dr. Martin Isanda sworn on 13th September 2004 is premised on the following grounds:-

- a) An Advocate – Client relationship existed between the Applicant and the Respondents.**
- b) The Respondents received on account of the Applicant Kshs.1,506,000/= in or about**

February 2002, being part settlement of the decretal sum in Kisumu HCCC NO. 6 of 2002.

c) The Respondents paid to the Applicant Kshs.1,100,000/= on or about 6/5/2002 and have retained the balance to date.

d) The Respondents have failed, refused and or ignored to pay the balance to the Applicant and/or deliver to the Applicant all deeds, documents and/or papers in their possession, power or custody in relation to the said Kisumu HCCC 6 of 2002.

The O.S. was finally canvassed by way of written submissions filed on 21st January 2015 for the Client, and 14th May 2015 for the Advocate.

In brief the Applicant's case is that he instructed the Respondent Advocates who successfully represented him in Kisumu HCCC NO. 6 of 2002 but upon admittedly receiving the decretal sum of Kshs.1,506,000/= in his favour they only released to him a sum of Kshs.1,100,000/= leaving a balance of Kshs.406,000/= out of which a sum of Kshs.217,391/44 has been found due to them as their fees. He now seeks the balance to wit Kshs.406,000/= less 217,391/44 which to it add a sum of Kshs.70,000/= paid to the Advocates as a deposit cum filing fees making a sum of Kshs.258,681/=. It is his Advocate's submission that there is no legal justification for withholding that sum and prays that the sum be paid together with interest from February 2002 to date.

On their part the Respondents/Advocates submit that the retained sum of 406,000/= was in respect of cash advanced to the Client/Applicant by Mr. Yogo Advocate for rent and upkeep; That moreover the taxed costs of Kshs.217,391/44 must be deducted from the figure claimed and the balance which is Kshs.198,608/56 should be retained as there are two matters that are yet to be taxed.

It is not disputed that an Advocate/Client relationship exists between the parties herein but as the saying goes litigation must come to an end. The Advocates / Respondents admit that they still hold a sum of Kshs.406,000/= held on account for the Client/Respondent. Though the Advocate deposes that the 406,000/= was what he advanced to the Client during hard times and what the Client agreed he would retain this is not borne by evidence and in his own submissions he makes an about turn and now seems to be saying that he held that money as a lien for his fees. The Client on his part admits that he owes the Advocate Kshs.217,391/44 in fees which they too agree and indeed they have attached a certificate of costs to the replying affidavit sworn by Geoffrey D.O. Yogo Advocate sworn on 21st March 2014. Much as an Advocate has right of lien it cannot be in perpetuity. The Advocate/Respondent has a Certificate of Costs for only Kshs.217,391/44 and no more. If there were other fees due to them they ought to have had them taxed by now. The proceedings annexed to the replying affidavit show that they last visited the issue of taxation on 4th December 2008 when the Court directed that they reconstruct the files from which those bills arose. It is now seven years and yet they have not reconstructed those files. In my view it would be unjust and unfair to allow them to continue holding onto the sum found due to their Client while they take no steps to have their "alleged" fees taxed. The applicant is certainly entitled to a sum of Kshs.188,608.56 from the Advocate (Kshs.406,000/= less the taxed costs of Kshs.217,391.44). I am however not persuaded that he is entitled to the sum of Kshs.70,000/= paid as filing fees as that goes to filing of the suit and which he admits was instituted.

Accordingly this Court makes the following orders in favour of the Client / Applicant as against the Advocates / Respondents:-

a) That the Advocates do pay the Client a sum of Kshs.188,608/56 being the sum owed less the taxed costs.

b) The said sum if not paid forthwith to attract interest at Court rates from the date of this judgment until payment in full.

c) The Advocates do deliver up all papers and documents, if any, in their possession relating to Kisumu HCCC No. 6 of 2002.

d) That the costs of this O.S. be borne by the Advocates/Respondents.

Signed, dated and delivered at Kisumu this 8th day of October, 2015

E. N. MAINA

JUDGE

In presence of:-

N/A for Client/Applicant

Mr. Omondi M.M. for Advocates/Respondents (Holding Brief for Mr. Yogo)

CC: Moses Okumu

MR. OMONDI M.M.: Can we have a stay of execution for 30 days.

COURT: Stay for 30 days is granted.

E. N. MAINA

JUDGE

8/10/2015