



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 159 OF 2011 (O.S)

IN THE MATTER OF THE MARRIED WOMENS PROPERTY ACT 1882

S E AAPPLICANT

AND

S S H..... RESPONDENT

RULING

1. The firm of Stephen Oddiaga & Co. Advocates represented the Respondent in this action. That firm filed a Notice of Motion dated 15th September 2011 seeking leave to cease acting for the Respondent. That Notice of Motion has remained unprosecuted. It therefore follows that the said firm is still on record for the Respondent.
2. On 2nd April, 2012 the firm of Stephen Oddiaga & Co. Advocates (**hereinafter the Advocate**) filed an Advocates/Client Bill of Costs against the Respondent. That Bill of Cost was before the Taxing Master on 4th May 2012 for Taxation. In a reserved Ruling delivered on 15th June 2012 the Taxing Master Ruled-

“RULING

The Bill of Costs dated 2nd April 2012 is premature in view of Section 62A(1) of the Advocate

which provides thus:

“62A(1) where there has been a change of Advocates or more than one change of Advocates, the Advocate finally on record shall draw a single bill for the whole of the matter in respect of which costs has been awarded.”

The intention of this provision is to avoid a situation where a litigant ends up perpetually attending Court to participate in taxation of a bill relating to one cause of action where there has been change of advocate as that become burdensome and vexing. More importantly it also saves on judicial time.

Further, the Applicant’s herein, Notice of Motion dated the 15/9/11 seeking to cease acting for the defendant is pending in Court.

In view of the above I hereby dismiss the Bill of Costs dated 2nd April 2012 with no orders to costs.

B. M. EKHUBI

DEPUTY REGISTRAR

15/6/12

Read out and signed in open Court in the presence of-

No appearance for both parties

Court clerk – Wambui

B. M. EKHUBI

DEPUTY REGISTRAR

15/6/12”

3. It is that Ruling which is the subject of the Advocate’s Chamber Summons dated 3rd July 2013. The Advocate seeks prayers-

- a. **That the Taxing Officer order dismissing the Bill of Costs of 22nd April 2012 be set aside.**
- b. **That the Bill of Costs of 2nd April 2012 be set down for hearing before another Deputy Registrar.**

The Notice of Motion is based on the ground that the Taxing Master’s Ruling was based on mis-interpretation of the legal provisions of paragraph 62A(1) of The Advocates (Remuneration) Order.

4. The Advocate relied on the case Civil Appeal No. 199 of 2002 MACHIRA & CO. ADVCOATES –Vs- ARTHUR K. MAGUGU & ANOTHER where the Court of Appeal made a finding that-

“15. The third and last issue raised in this appeal was whether or not

the Appellant’s bill of costs was prematurely taxed. We are not in any doubt that the Judge erred in holding that it was. Paragraph 62 A (1) upon which the judge based his decision states that:

“Where there has been a change of Advocates or more than one change of advocates, the advocate finally on record shall draw a single bill for the whole of the matter in respect of which costs have been awarded.” (emphasis supplied)

16. ...

17. We hold that paragraph 62A (1) does not apply to advocate/client bills of costs. An advocate whose instructions have been terminated is entitled to immediate payment of his fees for the services rendered. If upon demand the client refuses to pay, he is entitled to file his bill and have it taxed immediately. He does not have to wait until the matter is concluded. He also does not have to depend on the advocate on record to recover his fees for

him. The client might compromise with his current advocate on his fees and no bill is filed.”

5. The application was opposed by Respondent who now seems to be represented by the firm of Abdalla & Murshid Advocates, even though that firm has not filed a Notice of Change of Advocates. The Respondent opposed the application on the following grounds-

“1. The application is without merit and ought to be dismissed with costs.

2. The application is made in bad faith and therefore is an abuse of the court process.

3. The Respondent has at all material times been ready to pay, if any, additional costs to the Applicant but the Applicant has opted to file an exaggerated Bill of Costs.

4. The Taxing Master has made an appropriate Ruling herein.”

6. I have considered the application, the grounds in its support and the grounds in opposition. In my view the Taxing Master did indeed err to have dismissed the Advocate/Client Bill of Costs on the ground that it was filed prematurely.

7. Paragraph 62A(1) which is reproduced in the Taxing Master’s Ruling above relates to Party/Party Bill of Costs. In this regard reference is made of the case of **MACHIRA & CO. ADVOCATES** (supra).

8. The relevant Section that relates to Advocates/Client Bill of Costs is Section 48(1) of The Advocates Act Cap 16. That Section provides-

- 1. Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the Advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court’s jurisdiction, in which event action may be commenced before expiry of the period of one month.**
- 2. Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any Court of competent jurisdiction.**
- 3. Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.”**

Under that Section and Advocate has the option of sending a Bill to his client and if within one month it is not settled he can file a suit for the recovery of those costs. If however a defence is filed contesting those costs no judgment can be entered until the Bill of Costs has been taxed. See Section 49. Section 48 (3) however does provide that an Advocate can proceed to tax his Bill of Costs, even before filing suit for the recovery of those costs.

9. It is in view of the above that I make a finding there is merit in the Advocates Notice of Motion dated 3rd July 2013 and I grant the following orders-

- a. The dismissal on 15th June 2012 of the Advocates/Client Bill of Costs dated 2nd April 2012 is hereby set aside. That Bill of Costs is hereby reinstated.**
- b. The said Bill of Costs shall proceed to be taxed by any other Taxing Officer other than B. M. Ekhubi (DR).**
- c. The costs of Notice of Motion dated 3rd July 2013 are awarded to Stephen Oddiaga & Company Advocates to be paid by the Respondent.**

d. This being a Family Division matter I do hereby transfer it to the Family Division of this Court for disposal.

DATED and DELIVERED at MOMBASA this 15TH day of MAY, 2014.

MARY KASANGO

JUDGE