



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
MISC. CAUSE NO. 875 OF 2011

IN THE MATTER OF THE ADVOCATES ACT CAP 16

AND

IN THE ADVOCATES REMUNERATION ORDER

AND

IN THE MATTER OF THE ADVOCATES CLIENT BILL OF COSTS

SINGH GITAU ADVOCATES.....APPLICANT

VERSUS

CITY FINANCE BANK LIMITED.....RESPONDENT

R U L I N G

1. The Notice of Motion before me is dated **13th December 2012** and filed in Court on even date. It is expressed to be brought under Section 51(2) of the Advocates Act and order L Rule 1 of the Civil Procedure Rules. The Applicant seeks for the following orders:-

1. ***That Judgment be entered for the sum of Kshs. 4,689,439/49 only as taxed and certified by the Deputy Registrar as due to the applicant together with interest thereon from 8th November 2011.***
2. ***That the applicant be at liberty to execute against the Respondent.***
3. ***That the Costs of this application be borne by the Respondent.***

2. The application is based on the grounds stated on the face of the application and is supported by the affidavit of **James Gitau Singh**, an Advocate, sworn on **13th December 2012**.

3. It is the Applicant's position that they received instructions from the Client/Respondent to represent them and their directors in the proceedings in Nairobi HCCC No. 1506 of 2000, Nyanja Holdings Vs. City Finance Limited and HCCC No. 993 of 2002, Triple Eight Investments Limited Vs. City Finance Limited. Thereafter, on 21st June 2011, the Applicant filed a bill of costs for taxation against the

Respondent.

4. It is averred for the Applicant that the Taxing Master taxed the bill of costs at Kshs.4,689,439/49. The applicant has annexed a copy of the Certificate of taxation to the current application as **Exhibit JGS 7**. It is the Applicant's case the Applicant's costs in the sum of Kshs. 4,689,439/49 have not been satisfied. The Applicant contends that the Respondent has not filed an appeal within the requisite period despite having been aware of the Taxing mater's reasons.

5. The application is opposed vide the Replying affidavit of **Fred Chumo** sworn on **12th February 2013**. The deponent describes himself as the Head of legal of the Respondent Bank. He avers that the Respondent is now trading as Jamii Bora Bank Limited pursuant to a change of name.

6. The Respondent's case is that the Applicant was their tenant from 1st January 2006 for a term of six (6) years. (Attached and marked "FC 2" is a copy of the Lease.) On or about the year 2008, there was a change of management at the Respondent Bank. The deponent avers that from this point the Applicant refused to pay rent. The Applicant demanded that the rent be offset with their legal fees which they claimed were outstanding.

7. As a result, it is the Respondent's position that the Applicant owes them a substantial amount of rent. According to the deponent, the rent arrears and service charge as at January 2013 stood at Kshs.20,256,315.87cts and continues to accrue interest until full payment. (Attached and marked "FC 3" is a copy of the statement for rent due).The deponent further avers that in the past, the Applicant has refused to pay arrears of rent and sought to offset the same with the legal fees allegedly outstanding. It is the deponent's contention that such an arrangement was not agreed upon and has therefore never been put in place.

8. In addition, it is the Respondent's contention that no legal fees are payable. This is because the Applicant had an agreement with the Respondent pursuant to which they would receive 25% of every sum recovered in exchange for legal fees.

9. It is the Respondent's case that the matters they have raised herein should be investigated in a proper suit. According to the Respondent, the manner in which the Applicant seeks to obtain judgment and enforce the costs allegedly due is unfair and unjust to the client. It is further the Respondent's case that the taxing officer merely assessed the legal fees payable. Therefore, the liability to pay the said fees is still an issue for determination.

ANALYSIS

10. I have considered the application herein, as well as the affidavits on record. Having done so, I take the following view of the matter.

11. The main issue for determination is whether Judgment should be entered in favour of the Applicant for the sum of **Kshs. 4,689,439/49** as taxed by the Taxing Master. The Applicant has invoked section 51(2) of the Advocates Act which provides as follows:-

"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, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."

12. In a synopsis, the Respondent is asking this Court not to enter Judgment in favour of the applicant for two reasons. The first one is that the Applicant owes them rent. The second one is that there was an arrangement between them for the applicant to receive 25% of the monies recovered in exchange for legal fees.

13. On the issue of outstanding rent, other than the copy of the statement for rent due, there is no

substantial evidence before me that the rent is indeed due. In addition, no evidence has been adduced to the effect that the Applicant offset his legal fees from the rent due. In my view, the Respondent is entitled to claim the outstanding rent in another forum but not in the current application. The issue of the Applicant's fees and outstanding rent are not related in any way. Therefore it would not be appropriate to address them in this forum.

14. With regard to the second issue, I have perused the bundle of correspondences marked "**FC 5**". Indeed the same confirm that the Applicant and the Respondent had entered into an arrangement whereby the Applicant would receive 25% of the monies recovered. However, it is apparent that the said arrangement was not honoured in some cases. The fact that there was a Bill of Costs filed against the Respondent is enough evidence to this effect. Therefore, the Respondent cannot be heard to say that no legal fees are payable to the Applicant pursuant to the aforesaid arrangement.

15. In view of the foregoing, the Respondent has not made out a case for the objection to the Certificate of Taxation. The Respondent did not file a reference under paragraph 11 of the Advocates (Remuneration) Order with respect to the current taxation. In addition, the retainer is not disputed. Therefore, this Court has the mandate to enter Judgment in favour of the Applicant pursuant to **section 51 (2)** of the **Advocates Act**.

16. The upshot is that the Applicant's Notice of Motion dated **13th December 2012** and filed in Court on even date is hereby allowed with interest on the said Judgment at the rate of 14% per annum as from **29th November 2012**. The Respondent shall bear Applicant's costs of this application.

DATED, READ AND DELIVERED AT NAIROBI

THIS 6TH DAY OF JUNE 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Kassim holding brief for Mituga for Applicant

Isinta holding brief for Akech for Respondent

Teresia – Court Clerk