



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MISC. APPLICATION. NO.197 OF 2013
(IN THE MATTER OF EMBU HCCC NO 126 OF 2011

AND

IN THE MATTER OF THE ADVOCATES ACT)

PETERSON KINYUA KIEMA

T/A KINYUA KIAMA & CO. ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

SYLVIA JOSPHINE NJERICLIENT/RESPONDENT

RULING

1. The applicant filed an application dated 31/3/2014 seeking the following orders;
 - i. That the court do set aside the order of the Taxing Master of this court dated 14/3/2014.
 - ii. That this court do tax the said bill and or direct any other Deputy Registrar of this court to tax the Advocate-Client Bill of Costs dated 18/12/2013.
 - iii. That the cost of this application be provided for.

The application is based on the grounds on the face of the affidavit and on the supporting affidavit of Peterson Kinyua Kiama.

2. In the supporting affidavit the applicant states that he lodged his bill of costs which was heard by the Taxing Master. In his ruling the Taxing Master invoked the provisions of Rule 62 of the Advocates Remuneration Order and struck out his bill on grounds that he had not included in the bill payment for services rendered by the previous advocate in the matter. He avers that his bill was not a party and party bill of costs and as such the rule applied by the Tax Master was not applicable. He states that he can only tax his fees against the client in respect of the services he personally offered to her and therefore the Tax Master's requirements that he should have included the services and payments made by the previous advocate lacks a legal basis. The applicant also states that he is entitled to his fees and that striking out his bill is demeaning.
3. In the replying affidavit, the respondent states that the application is an abuse of court process and discloses no ground for setting aside the decision of the Deputy Registrar which was given upon consideration of the relevant law. The respondent avers that the paragraph 62A of the advocates remuneration order is couched in mandatory terms and that failure to adhere to the same renders any bill of costs whether party and party or otherwise fatally defective. The law is clear that the

- bill of costs must be filed together with a certificate. Whereas an advocate is entitled to costs, the same must be commensurate with the services rendered hence the necessity to file the Certificate
4. The only issue for determination is whether paragraph 62A(1) of the Advocates Remuneration Order applies to advocate/clients costs. Paragraph 62(A) (I) of the Advocates Remuneration Order provides that;

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

5. My thinking as that based on other High Court decisions is that the above provision applies only to party and party costs and that the provision was intended 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 advocates as that becomes burdensome and vexing. More importantly it saves judicial time.
6. In the **COURT OF APPEAL CASE OF MACHIRA &CO ADVOCATES VS ARTHUR MAGUGU & ANOTHER** it was unanimously held that save for interlocutory applications, costs are normally not awarded until the determination of the matter. That being the case paragraph 62(A) (1) refers to party and party costs and does not apply to the advocate/client bill of costs. An advocate whose instruction 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 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. Therefore under section 48(3) of the Advocates Act, an advocate can proceed to tax his bill of costs even before filing suit to recover the same.
7. In view of the position held in the above case and in the case of ***SEA –VS- SSH (in the matter of the married Women’s property Act) HCC NO.159/11 (O.S) MOMBASA HIGH COURT***, I do find that the notice of motion dated 31st March 2014 is well founded and I grant the following orders;
 - a. The dismissal on 15th March 2014 of the Advocates/Client Bill of Costs dated 18th December 2013 is hereby set aside. The Bill of Costs is hereby reinstated.
 - b. The said Bill of Costs shall proceed to be taxed by any other Taxing Officer other than Mr. A.G. Munene (Deputy Registrar).
 - c. The costs of the notice of motion dated 31st March 2014 are awarded to the Applicant to be paid by the Respondent.

DATED, SIGNED AND DELIVERED AT EMBU THIS 9TH DAY OF SEPTEMBER 2014.

H.I. ONG'UDI

JUDGE

In the presence of:-

Applicant

Respondent

Mutero/Kirong – C/c