



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Miscellaneous Civil Case 284 of 2007
MURUI, MUNGAI & CO. ADV.....PLAINTIFF
VERSUS
NEW KENYA CO-OPERATIVE CREMARIES LTD.....DEFENDANT
RULING

Chamber Summons 22/09/08 brought under the provisions of paragraph 11(1) and 2 Advocates Remuneration Order Section 3A and 63 e of Procedure Act Orders sought are that the order of Taxing Officer made on 13/2/2007 striking out the advocate/client Bill of Costs dated 23/2/2007 be set aside and that the Advocate/Client. Bill of costs dated 23/2/2007 be referred back for taxation.

The application is based on grounds set out on the application that:-

- (1) There was no agreement existing between advocate and client on the issue of remuneration between them.
- (2) The block Bill is not a bar to taxation.
- (3) Advocate/Client Bill dated 23/2/2007 was fatally defective on the basis of existence of an agreement yet no valid and binding agreement in writing signed by client was proved.

Section 45 relates only to contentious matters. There is no provision of awarding of interest in Advocate Remuneration Order.

The application is supported by affidavit of P. Munge Murage advocate. He denies existence of any agreement between the firm and client on fees. He swears that the fee note raised by the firm on 16/2/2004 read together with letter cannot constitute an agreement for purpose of Section 45 of the Advocates Act. The work done was non contentious involving the transfer of property Eldoret Municipality/Block9/21 and there exists no agreement signed by client that constitutes agreement. That the advocate is entitled to tax its costs. Consent for extension of time was filed by the parties exhibited as "PM3".

The ruling of the Deputy Registrar is attached to this application. There is no dispute as to retainer. From the record it is clear that instructions were received on 29/3/2006. Letters giving instructions are dated 28th and 29th March, 2006. The client states that the parties agreed on fees at Kshs.12,760,000/= for complete conveyance of all assets of the respondents in the buy back process.

It is said by client that the advocates prepared block fee note dated 16/2/2004 amounting to Kshs.12,760,000/= including VAT. That document was signed only by the advocate who stated “as regards our fees a sum of Kshs.11,000,000/= is acceptable save for the fact that you shall bear all necessary disbursements and taxes therein”.

By letter dated January 24th, 2007 the client demanded refund of Kshs.8,372,053. Then by a letter dated 2/2/2007 the advocate threatened to tax the advocate client bill.

The client has filed grounds of opposition saying the Reference field is incompetent since the taxing officer has not yet furnished to the objector the reasons of her decision. The entire reference is misconceived and premature and ought to be struck off with costs.

That the reference being based on affidavit evidence as is non admissible with the meaning of Rule 11(2) of Remuneration Order. There is no error in principal shown to warrant disturbance of her decision and that the applicants are estopped by their own conduct from denying the existence of agreement.

The parties herein filed written submissions on this reference. The Advocate/Applicant states that the property subject of this dispute was valued at Kshs.150,700,000/=. The matter before the taxing officer was the taxing the advocate bill in this matter not other matters between these parties.

The main issue in this matter is Section 45(1) Advocates Act which states;-

“An advocate and his client may -----make an agreement fixing the amount of advocate fees in contentious matter ----- and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.”

There is no evidence shown for the payment of money by client. The client has not shown payment and for what purpose. The block fee note is not an agreement. It is not signed by the client and therefore it is not binding agreement. The said Section 45 Advocates Act allows only in cases of contentious matters. Therefore in non contentious matters agreements are not applicable and the bills are for taxation.

Therefore for reason that there is no agreement entered into by the parties and that Section 45 applies only to contentious matters. I therefore allow application and grant orders as prayed.

The advocate/client bill of costs is hereby referred back to taxing master for taxation. Costs to the applicant.

Orders accordingly.

Dated, signed and delivered at Nairobi this 5th November, 2009.

JOYCE N. KHAMINWA

JUDGE