

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLN. NO. 188 OF 2016

MAKHANU, ODHIAMBO & CO. ADVOCATES....APPLICANT

VERSUS

ANNE KAREGI BETT.....RESPONDENT

RULING

1. In the Application dated 13th February, 2018, the Applicant is seeking for the following orders:

a. That Judgment be entered in favour of the Applicant as against the Respondent for the sum of Kenya shillings seven hundred and eighty three thousand, six hundred and seventy five (Kshs. 783,675) as taxed in the Certificate of Taxation dated 17th January, 2018.

b. That the costs of this Application together with interest on the taxed sum be borne by the respondent.

2. The Application is based on the grounds that the Applicant filed the Advocate-Client Bill of Costs dated 10th August, 2015; that the said Bill was taxed at the sum of Kshs. 783,675 and that Judgment should be entered for the taxed amount.

3. The Respondent filed Grounds of Opposition in which she averred that the Notice of Motion is premature, ill timed and rushed; that the Respondent has applied for certified copies of the Ruling delivered on 17th January, 2018 for the purpose of filing a Reference; that the Respondent has filed a Notice of Objection to the taxing master's decision and that the Application will render the intended Reference nugatory.

4. In her Replying Affidavit, the Respondent admitted that indeed the Applicant's Bill of Costs was taxed at Kshs. 783,675 and that she was dissatisfied with the decision of the taxing officer; that her advocate has not received the certified copy of the Ruling from the taxing officer and that the current Application was prematurely filed by the Applicant.

5. In the Supplementary Affidavit, the Applicant deponed that the delay by the Respondent in obtaining a copy of the Ruling from the court file should not be a reason for the denial of the orders sought; that the intended reference does not stop the court from granting the Application and that there is no reason as to why the Application should be dismissed.

6. It is not in dispute that the Applicant's Bill of Costs dated 10th August, 2015 was taxed on 7th January, 2018 at Kshs. 783,675. The Certificate of Taxation was then issued in respect to the said amount on 19th January, 2018. The Respondent has deponed that she intends to file a Reference in this court to challenge the decision of the Taxing officer.

7. It is the Respondent's assertion that she has not filed a Reference because the Taxing officer has not delivered to her advocate the reasons for the Ruling on taxation despite having requested for the said reasons. That may be so. However, there is no evidence before me to show that after the decision of 17th January, 2018, the Respondent sought for an order of stay of execution of the decision of the learned Taxing officer. Considering that the decision of the Taxing officer has never been stayed, I do not see why I should not grant the Application dated 13th February, 2018 for entry of Judgment.

8. Indeed, having extracted the Certificate of Costs, this court cannot decline to allow the Application for entry of Judgment on the basis that the Respondent intends to prefer a Reference against the decision of the Taxing officer. I have not been shown any law which prohibits the court to enter Judgment after taxation on the basis of an intended Reference. For those reasons, I allow the Application dated 13th February, 2018 in terms of prayer number 1.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 27TH DAY OF JULY, 2018.

O.A. ANGOTE

JUDGE