



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

MISC. APP. NO. 48 OF 2011

MALINDI HOLDINGS & ESTATE AGENTS LTD.....APPLICANT

=VERSUS=

1. COMMISSIONER OF LANDS

2. MONDO LIMITED

3. ALI OMAR SAID ALAMUDI

4. ALMA HOLDINGS LIMITED

5. MALINDI DISTRICT HEALTH MANAGMENT BOAD

6. MALINDI DISTRICT HOSPITAL.....RESPONDENTS

(for service rendered in Malindi HCCC NO. 105 of 2001)

=BETWEEN=

ALMA HOLDINGS LIMITED.....APPLICANT

=VERSUS=

MALINDI HOLIDINGS & ESTATE AGENTS LTD.....RESPONDENT

R U L I N G

1. The Application before me is dated 22nd April 2015 and is filed pursuant to the provisions of Order 51 Rule 2 of the Advocates Act.

2. In the Application, the Applicant is seeking for the following orders:

(a) That Judgment be entered in favour of the Applicant (Alma Holdings Ltd) against the Plaintiff/Respondent (Malindi Holdings & Estate Agents Ltd) in terms of the Certificate of Taxation given on 22/2/12 in the sum of Kshs.557,920/= together with interest thereon at court rates from 22/2/12 until payment in full.

(b) That the Respondent do pay to the Applicant the costs of this Application.

3. The Application is premised on the grounds that the Respondent sued the Applicant with 5 others in Malindi HCCC No. 105 of 2001; that the Applicant applied for the suit to be struck out with costs; that a Ruling was delivered on 19th May 2008 striking out the suit and that the Applicant's Bill of Costs was taxed and a Certificate of Taxation was issued on 15th August 2012.
4. In his Replying Affidavit, the Respondent's counsel deponed that in the Ruling dated and delivered at Malindi on 19th May 2008 in HCCC No. 105 of 2001, no costs were awarded to any party; that there is no suit in Miscellaneous Civil Application No. 48 of 2011 and that this is a fictitious suit.
5. The parties advocate appeared before me on 18th June 2015 and made oral submissions. I have considered the said submissions.
6. A perusal of this file shows that the Applicant filed a Party and Party Bill of costs on 15th November 2011 pursuant to the Ruling of Ombija J dated 19th May 2008 in Malindi HCCC No. 105 of 2001.
7. The Bill of Costs was duly served on the Respondent's advocate and the same was taxed by the taxing officer on 22nd February 2012.
8. After the expiry of the period within which the Respondent could file a Reference to the High Court, the Court issued to the Applicant a Certificate of Taxation on 15th August 2012. The Applicant now wants this court to enter Judgment in respect to the Certificate of Costs.
9. The Respondent's advocate has agreed that the Ruling that gave rise to the Bill of Costs was delivered in HCCC No. 105 of 2001 and not in this particular file.
10. I agree with the contention that the Party and Party Bill of Costs should have been filed in the main file, that is HCCC No. 105 of 2001. However, I have not been told what is unlawful about a party opening a miscellaneous file with a view of filing the Party and Party Bill of Costs.
11. Of course, the taxing officer, while taxing the Bill of Costs where a Miscellaneous file has been opened would require the main file while assessing the costs. I have not been told that the taxing officer did not do that.
12. In any event, the issue of whether or not it was procedural to open a separate file for the purpose of filing the Bill of Costs should have been raised before the taxing officer or by way of a reference to this court. Having not done so, the Respondent is estopped from raising that issue at this stage.
13. Indeed, this position applies also to the argument that Ombija J did not allow costs when he struck out the suit in HCCC No. 105 of 2001.
14. Considering that there is no reference before me, I shall not delve into the issue of whether, in the absence of an order of costs, the taxing officer could have still taxed the Applicant's costs as she purported to do. That issue is water under the bridge.
15. Considering that the taxation of the Bill of Costs has never been challenged by the Respondent by way of a Reference, and in view of the Certificate of Costs that was issued in this matter by the taxing officer, I allow the Application dated 22nd April 2015.

Dated and delivered in Malindi this **9th** day of **October** 2015.

O. A. Angote

Judge