



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 200 OF 2015

BETWEEN

OBED RIOBA NYASINGA.....CLAIMANT

VERSUS

NETCO MANAGEMENT.....RESPONDENT

AND

MOGAKA OMWENGA & MABEYA.....ADVOCATES

Rika J

Court Assistant: Andrew Mwabanga

Claimant in person.

Mogaka Omwenga & Mabeya Advocates for the Respondent/Advocates

RULING

1. Mogaka Omwenga & Mabeya Advocates acted for Obed Rioba Nyasinga, the Claimant in Mombasa E&LRC Cause No. 200 of 2015, brought against Netco Management Limited.
2. The Claimant withdrew instructions from Mogaka Omwenga & Mabeya Advocates, vide Notice of Intention to Act in Person, filed on 5th May, 2017.
3. This prompted the Advocates to file Advocate/Client Bill of Costs against the Claimant. The Bill was taxed by the Deputy Registrar of the E&LRC, and Certificate of Taxation issued in the sum of Kshs. 174,285, on 31st May, 2018.
4. The Claimant has filed an Application on 9th September, 2020, seeking a raft of Orders, primarily: -
 - The Court reviews and/or sets aside the Taxing Master's Order of 13th June, 2018.
 - The Claimant is granted leave to respond to the Bill of Costs.
 - Alternatively, the Bill of Costs is taxed afresh.
5. The Application is supported by the Affidavit of the Claimant, sworn on 9th September, 2020.
6. He states that he does not owe the Advocates any money, having paid what was agreed, at Kshs. 100,000 in full. The Claimant instructed another Law Firm – Mburu Nyamboye & Co., and was awarded Kshs. 373,376. The sum claimed by Mogaka Omwenga & Mabeya

Advocates, of Kshs. 174,285 is unreasonable. The Claimant further states he was not served with the Bill of Costs.

7. The Application is opposed through the Replying Affidavit of Mr. Peter Omwenga, Advocate, sworn on 15th September, 2020.

8. Mr. Omwenga explains that the Claimant was personally served with the Bill of Costs, on 19th March, 2018, when he visited Mr. Omwenga's Chambers to discuss settlement of legal fees owed to Mr. Omwenga's Law Firm. There is an Affidavit of Service sworn by Court Process Server Nicodemus Otieno, confirming service. The sum paid by the Claimant of Kshs. 100,000, was strictly with regard to Criminal Case No. 1483 of 2014, whereof the Advocates acted for the Claimant, an accused person in the criminal proceedings. His Application is therefore in abuse of the Court process.

The Court Finds: -

9. The Application by the Claimant lacks merit.

10. There is an Affidavit sworn by an authorized Court Process Server, establishing service.

11. The Claimant has not disputed the events attested in the Affidavit of the Court Process Server: that he visited Mr. Omwenga's office on 19th March, 2018; and that he had gone there to discuss settlement of legal fees, in light of his withdrawal of instructions.

12. It is not disputed that the Claimant was, in addition to the Civil Claim, represented by the same Advocates in a Criminal Case. There was no *pro bono* services in either case.

13. He concedes he paid Kshs. 100,000 for the Criminal Case. He concedes that the Advocates acted on his instructions in the Criminal Case. He has not given evidence that the same fees, was to be diverted to cater for the Civil Claim.

14. If the Claimant objects to any item taxed by the Deputy Registrar, or to the entire Bill of Costs, it is open to him to pursue a reference under the Advocates Remuneration Order. He could revisit his former Advocates' Chambers, and renegotiate the legal fees. The Bill of Costs was filed when initial negotiations broke down. It is important that the Claimant understands, there is a cost, in both Criminal and Civil legal representation.

IT IS ORDERED: -

a. The Application filed by the Claimant on 9th September, 2020 is rejected.

b. No order on the costs.

Dated and delivered at Mombasa this 28th day of October, 2020.

James Rika

Judge