



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

(Before Hon. Lady Justice Maureen Onyango)

MISCELLANEOUS APPLICATION NO. 71 OF 2018

LAUREN INTERNATIONAL FLOWERS LIMITED.....APPLICANT/CLIENT

VERSUS

V. CHOKAA T/A

V. CHOKAA AND COMPANY ADVOCATES.....RESPONDENT/ADVOCATE

CONSOLIDATED WITH

MISCELLANEOUS APPLICATION NO. 73 OF 2018

V. CHOKAA AND COMPANY ADVOCATES.....APPLICANT

VERSUS

LAUREN INTERNATIONAL FLOWERS LIMITED.....RESPONDENT

CONSOLIDATED WITH

MISCELLANEOUS APPLICATION NO. 74 OF 2018

V. CHOKAA AND COMPANY ADVOCATES.....APPLICANT

VERSUS

LAUREN INTERNATIONAL FLOWERS LIMITED.....RESPONDENT

CONSOLIDATED WITH

MISCELLANEOUS APPLICATION NO. 75 OF 2018

V. CHOKAA AND COMPANY ADVOCATES.....APPLICANT

VERSUS

LAUREN INTERNATIONAL FLOWERS LIMITED.....RESPONDENT

CONSOLIDATED WITH

MISCELLANEOUS APPLICATION NO. 76 OF 2018

V. CHOKAA AND COMPANY ADVOCATES.....APPLICANT

VERSUS

LAUREN INTERNATIONAL FLOWERS LIMITED.....RESPONDENT

CONSOLIDATED WITH

MISCELLANEOUS APPLICATION NO. 77 OF 2018

V. CHOKAA AND COMPANY ADVOCATES.....APPLICANT

VERSUS

LAUREN INTERNATIONAL FLOWERS LIMITED.....RESPONDENT

RULING

What is before me for determination is a reference filed by **Lauren International Flowers Limited**, the Applicant/client against the respondent/advocate. The Applicant/Client avers that the Respondent/Advocate filed his Bill of Costs for a total of seven (7) matters. The Bill of Costs was taxed and a ruling delivered on 23rd January 2018. A certificate of taxation on all the files was issued on 22nd February 2018. The Respondent/Advocate then filed Miscellaneous Application 86 – 92 of 2018 before this court seeking for judgment for purposes of execution of the Bill of Costs against the Applicant/Client.

The Applicant/Client being aggrieved notified the Respondent/Advocate of its intent to file a reference before execution. The Respondent/Advocate however went ahead with execution process thereby compelling the Applicant/Client to file an application seeking stay of the execution of the Bill of Costs.

The application for stay was allowed on 23rd April 2018. The Applicant/Client thereafter filed these references on 19th July 2018. The Respondent/Advocate was served but has not filed any response. The Respondent/Advocate was further served with hearing notice but did not attend court for the hearing of the application.

In its Chamber Summons dated 19th July 2019 and filed on even date, the Applicant/Client prays for the following orders –

1. That the Court be pleased to Order that the execution of the Certificate of Costs arising from the Deputy Registrar's Ruling on the Taxation dated 23rd January 2018 in Misc. Application No. 86 of 2017 and any proceedings arising therefrom be stayed pending the hearing and final determination of the Reference herein filed.
2. That the Court be pleased to vacate/set aside in its entirety and on all items, the Ruling of the Honourable Daisy Mutai, Deputy Registrar, dated and delivered on 23rd January 2018, in respect of the Advocates-Client Bill of Costs dated 20th July 2017.
3. That the Court be pleased to issue a declaration that the Client/Applicant settled the Respondent/Advocates fees in full.
4. That in the alternative and without prejudice to any of the above, the Court be pleased to call on

the Respondent/Advocate by whom such costs have been so incurred to show cause why such costs should not be disallowed.

5. That costs of this Application be provided for.

The application is supported by the grounds on the face thereof and the affidavit of **Joseph Antonios Tawk**, a Director of the Applicant/Client in which it avers that the Applicant/Client entered into an agreement on fees with the Respondent/Advocatee to charge Kshs.50,000 per file and an additional Kshs.40,000 for disbursements, that the Applicant/Client and thereafter paid the advocate Kshs.390,000 in full settlement of the fees. That the Respondent/Advocate only filed a Notice of Appointment and Defence both dated 22nd August 2016 and thereafter did nothing as the matter was never listed for hearing when the Advocate was in conduct of the matter. The Affiant avers that he instructed the Respondent/Advocate to consolidate the seven matters and thereafter apply to have the consolidated suit struck out as the claims are statute barred but the Respondent/Advocate failed to follow the instructions of his client. That the Applicant/Client was compelled to engage another counsel pursuant to Rule 62A of the Advocates Rules.

The Applicant/Client avers that this court has jurisdiction under Order 61 of Advocates Remuneration Order to grant the orders sought. The Applicant/Client prays that the reference No. 71 – 77 of 2019 be allowed.

I have considered the ruling by Hon. Daisy Mutai the Deputy Registrar/Taxing Master. The ruling was based on the fact that there was no agreement on fees. The Taxing Master acknowledged the payment of only Kshs.350,000 which was regarded as down payment but did not take into account payment of Kshs.40,000 for disbursements. The Taxing Master further increased the instructions fees by one-half under Schedule 6B and further allowed disbursements, to arrive at the taxed amount of Kshs.65,000 that was granted in the certificate of costs.

The Respondent/Advocate having failed to respond to the applications herein, the averments of the Applicant/Client remain uncontroverted. In the circumstances I find that there was an agreement on fees between the Respondent/Advocate and the Applicant/Client and that apart from filing Notice of Appointment and Defence, the Respondent/Advocate took no other action in respect of the cases. The Respondent/Advocate is therefore not entitled to the taxed amount.

I accordingly allow the reference, set aside the ruling of the Taxing Master dated 23rd January 2018 and all subsequent proceedings in respect of the Bill of costs. I further declare that the Client/Applicant settled the Respondent/Advocates fees in full.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 2ND DAY OF AUGUST 2019

MAUREEN ONYANGO

JUDGE