



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

MISC APP 50 OF 2017

ONINDO ONINDO ASSOCIATES ADVOCATES.....CLAIMANT

VERSUS

DANIEL MWANGI.....RESPONDENT

RULING

1. By a motion dated 11th September, 2017, the claimant sought orders among others that:

- a. *That this order made on the 16th June, 2017 be reviewed and this application be heard ex-parte in the first instance.*
- b. *That the claimant's application for Advocate/Client Bill of costs dated 3rd April, 2017 be dismissed.*
- c. *That the costs of this application be borne by the Claimant/Respondent.*

2. The application was supported by the affidavit of the claimant in which he deponed among others that:

- a. *That at all material times to this suit I was never served with the claimant/respondent's bill of costs as alleged.*
- b. *That I only became aware of the said bill of costs on 5th September, 2017 following receipt of a letter from the claimant dated 1st August, 2017 which contained a further letter to the LSK dated 1st August, 2017, a Certificate of Taxation dated 27th July, 2017 and a Ruling dated 16th June 2017. That prior to the receipt of the letter, I was not aware that the Advocate had filed the application for bill of costs for work done on my behalf.*
- c. *That upon receipt of the aforementioned letter, I proceeded to write a letter dated 8th September, 2017 requesting for a copy of the cost of billing.*
- d. *That I wish to state that the claimant was my advocate in Industrial court Cause No 307 of 2010 and he only represented me for review of the judgement delivered on 14th June, 2013. We had agreed that I would pay for his services upfront and I proceeded to do so by remitting to the claimant a sum of Kshs 25,000/= . There were no outstanding payment sin respect to the review.*
- e. *That the review of the said claim was successful. However, the claimant failed to remit Kshs 24,000/= which was awarded to me on 24th March, 2014. To date, I am yet to receive any portion of the said amount.*
- f. *That following the outcome of the review, the claimant advised me that he would file an application for appeal out of time on my behalf to enable us appeal the judgement of the court. On 25th March, 2014, I proceeded to borrow a loan through a letter to my employer to enable me finance the said application.*
- g. *That I proceeded to remit a deposit of Kshs 27,000/= to the claimant to facilitate the filing of the application for appeal out of time. Unfortunately, the claimant failed to provide any evidence that he had filed the application and my requests for a receipt for the filing fees of the application led to a huge disagreement between us.*

h. That following the said disagreement, the claimant proceeded to send back my files via G4S. Nyambena & Co Advocates had provided me with the files following the conclusion of the original suit Industrial Court Cause No 307 of 2010 as they had handled the matter on my behalf. I had provided the claimant with the said files for reference purposes during the review process and for purposes of the intended appeal

i. That following our disagreement, I proceeded to lodge a complaint with the LSK on 4th November, 2015. The LSK wrote to the claimant on 9th November, 2015 informing him of the said complaint.

j. That I strongly dispute the claimant's claim for costs as I had fully settled what was due as per our Advocate-client Agreement being KShs 25,000/=. Additionally, the claimant failed to remit the aforementioned Kshs 24,000/= awarded to me following the review, or any part thereof. I further object to the claim for costs as the claimant is yet to account for the Kshs 27,000/= which I deposited with him for purposes of filing an application to appeal out of time.

3. The advocate opposed the application and filed a replying affidavit in which he deponed on the main that:

a. That I wish the court to note that from the application of Daniel Mwangi, the address given for service is P.O. Box 41853-00100 Nairobi. There is no physical address given by the said Daniel Mwangi.

b. That I wish the court to note that every time the firm of Onindo Onindo & Associates was allocated a date either in the Registry or from the court, the firm used to serve Daniel Mwangi by way of registered mail. Several affidavits of service are on record.

c. That the firm of Onindo Onindo & Associates used the same address given by Daniel Mwangi in his Notice of Motion application dated 9.11.2017 and this confirms that Daniel Mwangi used to receive all registered letters from the firm of Onindo Onindo & Associates.

d. That I can confirm that non of the letters registered in the name of Daniel Mwangi were ever returned to the firm of Onindo Onindo & Associates.

e. That therefore for Daniel Mwangi to state in paragraph 2 of his supporting affidavit that he was never served with the bill of costs is false.

f. That Daniel Mwangi in paragraph 3 of the supporting affidavit does not state how then he received the letter from the firm of Onindo Onindo & Associates, whether it was by registered mail or personal service. I wish to confirm to this court that it was by way of registered mail as stated in paragraph 8 herein.

g. That further, and as indicated in paragraph 3 of the supporting affidavit of Daniel Mwangi, I obliged to inform the Law Society of Kenya as it was the same Law Society of Kenya that advised the firm of Onindo Onindo & Associates to file the bill of costs after Daniel Mwangi lodged a complaint against me.

h. That in the complaint by Daniel Mwangi to the Law Society of Kenya he stated that he paid the firm of Onindo Onindo & Associates the sum of Kshs 54,000. No proof was adduced to show that such an amount was paid.

i. That I verily believe that Mr Daniel Mwangi was aware of the bill of costs from its inception and whatever he states in paragraph 2 of his supporting affidavit are mere lies and an afterthought.

j. That a sum of Kshs 25,000 as stated in paragraph 5 of the supporting affidavit was not the agreed amount for the entire but a deposit for work to be done. That charging kshs 25,000 for services rendered for the entire suit would be an affront to the Advocates Remuneration Order.

4. The application before me seem to concern complaint by the applicant that the taxation of the client advocate bill was done in his absence. He therefore feels he was condemned unheard. The right to be heard is fundamental principle of natural justice which cannot be denied unless it can be shown that the complainant by his or her own conduct made it impossible to be granted this right.

5. Whereas the advocate claims several letter to the claimant were served to the claimant using his last known address, there was no evidence of such several certificates of posting attached to the advocates replying affidavit to support the allegation. No great prejudice would be occasioned to the advocate is the bill of costs is taxed afresh with the participation of the applicant.

6. The court therefore sets aside the ex parte taxation and directs that the same be set down afresh for taxation before the Deputy Registrar of the Court.

7. It is so ordered.

Dated at Nairobi this 9th day of February, 2018

Abuodha J. N.

Judge

Delivered this 9th day of February, 2018

In the presence of:-

..... for the claimant

..... for the Respondent

Abuodha J. N.

Judge