



REPUBLIC OF KENYA

IN THE EMPLOYMENT NAD LABOUR RELATIONS COURT OF KENYA AT NAIROBI

MISC. APPL. NO. 90 OF 2015

NJUGUNA AND PARTNERS ADVOCATES APPLICANT

VERSUS

EXPRESS DDB KENYA LTD RESPONDENT

RULING

1. By application and Notice of Motion filed on 28th June, 2016 and brought under the provisions of section 51(2) of the Advocates Act, the applicant, Njuguna & Partners are seeking for orders that;

1. That judgement be entered for the applicant as against the Respondent for the sum of Kshs.181, 945 being the certified costs due to the applicant.

2. That the Respondent do pay to the applicant interest on the certified costs at 14% per annum from the date of taxation, that is, 26/2/2016, until payment in full.

3. That the Respondent do pay to the applicant the costs of this application.

4. The application is supported by the application of Charles Mbugua Njuguna and on the grounds that the advocate-client costs due to the applicant herein have been taxed at Kshs.181, 945.00 and there is no dispute that the Respondent retained the advocates as their advocates in this case. Under paragraph 7 of the Advocates (Remuneration) Order, advocates are entitled to interest at 14% per annum on expiry of 30 days from the delivery of the Bill of Costs.

5. The Respondent in reply, the Respondent filed Replying Affidavit on 1st July, 2016 sworn by **Mohan Singh Dhariwal** the Chief Executive Officer of the respondent. He avers that the applicant filed suit in the respondent's behalf in **Industrial Cause No.1441 of 2013, George Muteti versus Express DDB Kenya** at an agreed legal fees of Kshs.115, 500l.00 and a fees agreement was drawn. The applicant never attended Court and his clerk fixed the matter for hearing on 6th July 2015. On 30th June, 2015 he attended a pre-trial meeting with the applicant where he started demanding for Kshs.285, 000.00 for a totally unrelated matter and then threatened not to attend Court for the scheduled hearing. This forced the Respondent to appoint a new advocate on the eve of the hearing as the applicant refused to hold further discussions with him.

4. Mr Dhariwal also avers that the Respondent was opposed to the Bill of Costs but was determined *ex parte*. The advocate attended for taxation but was informed that the matter was not scheduled only to be informed later that taxation took place and a stay application as filed, the deputy registrar declined to accept it for lack of jurisdiction.

5. Mr Dhariwal also avers that as the director of I-Media Limited, he instructed the applicant in **CMCC No.877 of 2013, I-Media Ltd versus Exclamations Marketing Ltd** where the company was the plaintiff. The company obtained judgement for Kshs.512, 260.00 which the applicant collected but only remitted the sum of Kshs.338, 206.00 only. A balance of kshs.174, 054.00 is due. That efforts to have the applicant set of these sums as owed from CMCC 877 of 2013, have been declined.

6. If the application is granted, the Respondent shall suffer prejudice. The applicant is abusing Court process and this is meant to unjustly stop the Respondent from recovering its money held by the applicant for over a year. The application lacks merit and should be dismissed with costs.

7. In the alternative the Court should set off the applicant's claim in this application against the respondent's claim of Kshs.174, 054.00 due in CMCC 877 of 2013.

8. Both parties agreed to file written submissions. Only the applicant file don 11th October 2016. On the due date of 3rd November 2016, the Respondent was directed to file the written submissions by close of day, but this was not done.

9. The applicant submit that under section 51 of the Advocates Act where there is a Bill of Costs that has been taxed and unless it is set aside or altered and where such relates to a retainer for the services of the advocate, judgement can be entered for the same. In **Lubelellah & Associates Advocates versus N.K. Brothers Limited [2014] eKLR**; the Court held that once taxation of costs has been done and there is no reference against the same, judgement shall be entered for the payment of such sums as due. In this case, taxation as on 26th February 2016 for the sum of kshs.181, 954.00 and a Certificate of Taxation issued on 13th June 2016. This has not been challenged.

10. The applicant also submit that interests on due amount should also be paid at 14% on the taxed amounts as under Rule 7 of the Advocates (Remuneration) Order as held in **Kithi & Company Advocates versus Menengai Downs Limited [2015] eKLR**. that in this case, the applicant is entitled to interests on the due amounts starting 22nd October 2015 until the amount is fully paid as the Respondent was served with the certificate of costs of 22nd September,2015 and 30 days have since elapsed and due amounts not settled.

Determination

11. The Certificate of Costs is issued upon an applicant going through the motions of attendance before the taxing master for assessment and confirmation of the same. Once such a certificate is issued, it becomes a final in terms of setting out what amounts are due and unless this is set aside or varies or altered, no other action would be required from the Court save to enter judgement. This is pursuant to the provisions of section 51(2) of the Advocates Act.

12. Also, where a Certificate of costs is issued and served upon a respondent, rule 7 of the Advocates (Remuneration) Order requires that the amounts due be paid within one (1) month from the date of service as otherwise interests at 14% per annum is payable on the due amounts.

13. In reply, the respondents asserts that the applicant is owing them from judgement amounts in CMCC No.877 of 2013 and that the amounts owing should be offset herein. However, the matters herein relate to retainer costs due from **Industrial Cause No.1441 of 2013, George Muteti versus Express DDB Kenya**, and none other. Where the Respondent is keen to protect its rights as the plaintiff in another matter, such is outside of these proceedings and current proceedings cannot be used to cure other extraneous matters.

The applicant's application filed on 28th June, 2016 has merit and is hereby allowed in terms of prayer (1) and (2) with the interests due on the taxed amount being 14% as from 22nd October 2015. The Respondent shall also pay costs for this application.

Orders accordingly.

Ruling delivered in open Court at Nairobi at Nairobi this 19th day of December, 2016.

M. MBARU JUDGE

In the presence of:

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