



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Appli 39 of 2005

**OGONJI & TIEGO ADVOCATES.....APPLICANT
VERSUS**

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VERSUS**

SAMUEL KINYUA MUTUGIRESPONDENT

RULING

The advocate with a bill of costs has filed a Notice of Motion dated 26th July, 2006. That Notice of Motion is brought under Section 51(2) of the Advocates Act. The prayer that it seeks is that the Respondent do pay the Applicant Kshs.150,000/= and furnish security for the balance of the taxed costs Kshs.126,575.50 as a condition for stay. The affidavit in support states that on 21st January, 2005 a bill of costs was lodged in court for taxation against the Respondent. That bill of costs was on 18th April, 2005 taxed by the taxing officer in favour of the Applicant for the sum of Kshs.276,575.50. That the Respondent has to date failed to pay the amount taxed. The Applicant in the affidavit in support gave a chronology of various matters that it had obtained judgement for taxed costs against the Respondent who was its client and which costs the Respondent has to date failed to pay. The Applicant therefore, concluded that the opposition to the present application is made without good faith.

The Respondent opposed the application on the basis that he has challenged the taxation and to that effect lodged a notice of objection on 27th March, 2006. The Respondent further stated that he had settled what he deemed he owed the Applicant but the balance he objected to because the amount he had paid to the applicant was not accounted for during taxation.

I have perused the court file and I find that certificate of taxation was issued by this court on 18th April, 2005. The Respondent made an application for enlargement of time to file its objection to that taxation. By a ruling dated 24th March, 2006. That time was enlarged and the Respondent was given 14 days to file objection. The Respondent complied and indeed on 27th March, 2006 filed a notice of objection to the taxed bill. In the perusal of the court file I have come across a letter dated 7th July, 2005 addressed to the advocate for the Respondent informing the said advocate that proceedings and ruling of the taxation were ready for collection on payment of Kshs.150/=. It is not clear whether that letter was received by the Respondent and that issue was not taken up during the hearing of this matter. That as it may be since retainer is not disputed by the Respondent and in view of the fact that there is a certificate

of taxation on record which has not been altered or set aside, the court will grant the following orders:-

(1) That Judgement be and is hereby entered for Kshs.276,575.50 against the Respondent.

(2) That the Respondent shall deposit into court Kshs.126,575.50 within 30 days from this date hereof. On such deposit there shall be stay of execution in respect of that amount until the hearing of the Respondent's reference or until further orders of this court.

(3) The Respondent shall within 14 days from this date hereof file a reference in respect of the taxation hereof. In default of such filing the stay granted in (2) above will be discharged and the applicant would be entitled to execute against the whole sum taxed that is Kshs.276,575.50.

(4) The Applicant is granted costs of the Notice of Motion dated 26th July, 2006.

MARY KASANGO

JUDGE

Dated and delivered this 19th day of December, 2006.

MARY KASANGO

JUDGE



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