



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

MISCELLANEOUS CIVIL APPLICATION NO. 24B OF 2019

JOSEPH N. NGIGI

T/A NGAYWA NGIGI & KIBET ADVOCATES.....APPLICANT

VERSUS

XPLICO INSURANCE CO. LIMITED.....RESPONDENT

JUDGEMENT

1. This judgement is in respect to the Notice of Motion dated 17th January, 2020 filed by the Applicant under the provisions of Section 51(1) & (2) Advocates Act. The Applicant seeks orders:-

(a) That judgement be entered in favour of the Applicant against the respondent for the sum of Kenya Shillings Two Hundred and Twenty-Nine Thousand Eight Hundred and Thirty-Seven (229,837.00) being certified costs due to the Applicant as against the Respondent.

(b) That the Respondent do pay the Applicant the costs of this application together with interest on the taxed sum.

2. The application is brought on the grounds reproduced verbatim below that:-

(a) The Advocate – client costs due to the applicant herein have been taxed at Kshs.229,837.00 in favour of the applicant as against the respondent and a certificate of taxation issued to that effect.

(b) The Respondent has neglected, refused and/or failed to settle the taxed costs.

(c) There is no dispute that the Respondent retained the Applicant herein as their advocate in respect of which advocate – clients' costs were taxed herein.

(d) It is only fair and just in the circumstances that judgement be entered for the amount of Kshs.229,837.00 being the sum certified to be due to the Applicant herein as against the Respondent.

3. The Application is supported by the affidavit of Joseph N Ngigi advocate sworn on 17th January 2020. He depones *inter alia* that the Respondent instructed the firm of Ngaywa Ngigi & Kibet Advocates to act for the Defendant in **Bomet CMCC NO. 92 OF 2018 Anna Chepkoech Langat (Suing as personal representative of the Estate of Wilson Kipnetich Langat) Vs. Joseph Omanga & Patrick Karanja Kamangu**. That the Respondent thereafter failed or neglected to settle the taxed costs reflected in the certificate of costs annexed to the Application.

4. The application came up for hearing before me on 14th October, 2020. However, there was no appearance for the Respondent and the Applicant could not demonstrate that he had served a hearing notice for the specific date whereupon the court directed that fresh service be effected for hearing on 3rd December, 2020. The Respondent did not attend court again on that date. The court was satisfied that the Respondent had been served with the application and the hearing notice. On record is an affidavit of service dated 5th November, 2020 sworn by one Maxwell Timothy Oyombera, process server and filed by the Applicant on 1st December, 2020. The Respondent did not file any response to the application and did not attend court. The court therefore allowed the Applicant to urge the application *ex parte*.

5. In urging the application on behalf of Mr. Ngigi, Mr. Cheruiyot briefly submitted that the Respondent had been served with the certificate of costs and that he had neither filed a response to the present application nor a reference before the high court disputing the taxed costs. He

prayed that the application be allowed as prayed since it was not opposed.

6. I have considered the application. The applicable principles are that that once a court of competent jurisdiction has issued a certificate of costs, and which certificate has neither been altered nor set aside, and barring any reference filed in the high court, the role of the court is to enter judgement upon application by the advocate seeking to enforce payment of his fees. (See ***Gachuri Kariuki & Co. Advocates vs Invesco Assurance Co. Ltd [2014] eKLR; Winfred Nyakundi Konosi t/a Konosi & Co. Advocates V. Invesco Assurance Company Ltd. (2018) eKLR.***

7. **Section 51(2)** of the **Advocates Act** under which the Application is brought is couched in plain and unambiguous words. It provides that:-

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

8. In the present case, the Applicant has stated that he represented the Respondent, then Defendant in **BOMET CMCC NO. 92 OF 2018 Anna Chepkoech Langat (Suing as Personal Representative of the Estate of Wilson Kipngetich Langat) Vs. Joseph Omanga & Patrick Karanja Kamangu**. He has attached copies of the pleadings in that case. Further, there is nothing on record to suggest that the retainer was disputed and neither has the Respondent filed any Reference in the High Court disputing the taxation. I therefore find that the certificate of costs given under the hand and seal of the taxing officer on 15th January, 2020 remains unchallenged.

9. Consequently, I find that there is no further role for this court except to enter judgment, which I hereby do, in favour of the Applicant, for the amount stated in the certificate of costs being Two hundred and twenty-nine thousand, eight hundred and thirty-seven shillings (Kshs.229,837). The sum shall attract interest at court rates from the date of this judgement until payment in full.

10. Orders accordingly.

Judgment delivered, dated and signed at Bomet this 27th day of January, 2021.

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Kurgat holding brief for Mr. Ngigi for the Applicant, Kiprotich (Court Assistant) and in the absence of the Respondent.