



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC.APP.NO. 74 OF 2019

IN THE MATTER OF THE ADVOCATES ACT

BETWEEN

NGAYWA NGIGI & KIBET ADVOCATES.....APPLICANT

VERSUS

XPLICICO INSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. The Notice of Motion is dated the 24th September, 2019 and is brought under the provisions of Section 51(2) of the Advocates Act and the applicant seeks the following orders;

- (i) That judgment be entered in favour of the applicant against the respondent for the sum of Kenya Shillings KShs.140,995/=
- (ii) The respondent do pay to the applicant the costs of the application;

2. The application is premised on the grounds on the face of the application and on the Supporting Affidavit made on the same date by **JOSEPH N.NGIGI ADVOCATE** who deponed that the applicant had lodged its Bill of Costs which was allowed and taxed against the respondent in the sum of KShs.140,995/= and a Certificate of Cost was issued; that the respondent was duly served with the application and did not file a response to the same; and has failed and or neglected to make good any payment on the taxed costs; and as the application was uncontested the applicant prayed that judgment be entered as prayed;

3. The applicable law is found at Section 51(2) of the Advocates Act reads as follows;

“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.”

4. From the material placed before it this court was unable to make any finding or determination on whether the case before it was a suitable one for it to exercise its discretion in favour of the applicant and thereafter proceed to enter judgment against the respondent for the certified sum;

5. Instead of striking out the application this court gave the applicant leave to file a Supplementary Affidavit to include the omissions and the applicant duly complied by filing one on the 16/07/2020 containing the requisite material;and included make an averment in the Supporting Affidavit that it had satisfied the conditions of taxation and that the Certificate of Costs had not been set aside, altered varied or appealed against;

6. In the light of the averment and the material placed before it, this court findsthat all the conditions as set out in Section 51(2) of the Act have been satisfied;reference is made to the case of **KTK Advocates vs Baringo County Government (2018) eKLR** where it was held that;

“.... when the two conditions are satisfied the court has the discretion to enter judgment for the sum certified due with costs.”

7. This court is satisfied that this a suitable case for it to exercise its discretion in favour of the applicant and therefore proceeds to enter judgment against the respondent for the certified sums.

FINDINGS AND DETERMINATION

8. For the foregoing reasons this court makes the following findings and determinations;

(i) This court finds that all the conditions set down in Section 51(2) of the Advocates Act have been satisfied; the application is found to have merit and is hereby allowed; this order shall apply to Misc. Application No.74/2019 and Misc.Application No.75/2019;

(ii) Judgment is hereby entered in favour of the applicant against the respondent in the sum of KShs.140,995/- in the instant application; and judgment is also entered in Misc.App.No.74/2019 in the sum of Kshs.132,280/- ; and in Misc.App.No.75/2019 in the sum of Kshs.173,682/-;

(iii) There shall be no order as to costs.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 25th day of February, 2021.

HON. A. MSHILA

JUDGE