



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 36 OF 2019

BETWEEN

MAINA & MAINA ADVOCATES.....APPLICANT

VERSUS

BENEDICT KABUGI NDUNGU.....RESPONDENT

RULING

1. The Applicant herein is a firm of Advocates, and it has filed an application by way of a Notice of Motion dated 5<sup>th</sup> May 2020, seeking orders that judgment be entered against the Respondent, who was their client, for the sum of Kenya Shillings Three Hundred and Seventy Three Thousands, Six Hundred and Ten (Kshs 373,610/=). The said sum are the advocate/client costs as taxed on 4<sup>th</sup> December, 2019. The Applicant also seeks interest thereon at 14% p.a. from 25<sup>th</sup> November, 2019 until payment in full, and the costs of the application. The application is supported by an affidavit sworn on 8<sup>th</sup> January 2020 by Gideon Mutai, an Advocate practicing with the Applicant.

2. The grounds for the application as averred in the said pleadings, are that the Applicant filed a Bill of Costs dated 17<sup>th</sup> October, 2019 for services rendered to the Respondent in **JR Miscellaneous Application NO. 204 of 2019: Benedict Kabugi Ndungi vs Chief Magistrate's Court, Nairobi & 4 Others**. The said Bill of Costs was subsequently taxed in the sum Kenya Shillings Three Hundred and Seventy Three Thousands, Six Hundred and Ten (Kshs 373,610/=), and a certificate of taxation issued to that effect dated 4<sup>th</sup> December, 2019. Further, that the said Certificate of taxation has not been set aside and/or altered, however, the Respondent has neglected and/or refused to settle the taxed sum together with interest thereon. Lastly, that it is in the interest of justice that the Applicant is remunerated for their services. The Applicant annexed a copy of the said Certificate of Taxation, and of their letter dated 11<sup>th</sup> December 2019 addressed to the Respondent forwarding certificate of taxation.

3. The Respondent did not file any response to, or oppose the said application, despite evidence provided by the Applicant that he was duly served.

**The Determination**

4. The Applicant filed submissions dated 18<sup>th</sup> June 2020, and relied on the provisions of section 51(2) of the Advocates Act, and the decisions in **KTK Advocates vs Baringo County Government, [2017] eKLR**; **Lubulellah & Associated vs N.K. Brothers Ltd, (2014) eKLR**; and **Musyoka & Wambua Advocates vs Rustam Hira Advocate, (2006) eKLR**; for the submissions that once a Certificate of Costs is issued and there is no order to set it aside or alter it or dispute as to retainer, then no other action is required from the Court save to enter judgment.

5. On the interested sought of 14 % per annum, the Applicant relied on Rule 7 of the Advocates Remuneration Order, 2009 and the decision in **Kithi & Co. Advocates vs Menengai Downs Limited, (2015) eKLR**, and submitted that interest should start to run from the 4<sup>th</sup> December 2019.

6. The issue for determination in the instant application is whether judgment should be entered against the Respondent for the taxed costs due to the Applicant. It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is if the same has been set aside or altered, or where there is an issue with retainer. Under section 51(2) of the Advocates Act, this Court has power to enter judgment on the taxed costs in the circumstances set out therein 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”.**

7. This position has been upheld in the various cases cited by the Applicant, as well as in **Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited, (2007) e KLR, Dally and Figgis Advocates vs Homelex Limited (2013) eKLR** and **Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Ltd (2012) eKLR**. In addition, Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14 %, from the expiration of one month from the date of delivery of a bill of costs to a client.

8. The Respondent has not brought any evidence of any pending dispute as regards the amount of taxed costs, or of the Applicant's retainer. The finality of the taxed costs and Certificate of Costs issued to the Applicant is therefore not in dispute, and the Applicant is thus entitled to judgment.

9. In the premises I find merit in the Applicant's Notice of Motion dated 5<sup>th</sup> May 2020 and grant the following orders:

**I. Judgment is entered for the Applicant against the Respondent for the taxed costs of Kenya Shillings Three Hundred and Seventy Three Thousands, Six Hundred and Ten (Kshs 373,610/=), as certified in the Certificate of Taxation issued on 4<sup>th</sup> December, 2019, with interest at 14% per annum from the date of taxation until payment in full.**

**II. The Applicant shall have costs of the Notice of Motion dated 5<sup>th</sup> May 2020 of Kshs 10,000/=.**

10. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2020**

**P. NYAMWEYA**

**JUDGE**

**FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS JUDGMENT**

**In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this judgment will be delivered electronically by transmission to the email addresses of the Applicant's and Respondent's Advocates on record.**

**P. NYAMWEYA**

**JUDGE**