



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 55 OF 2018

SHERMAN NYONGESA & MTUBIA ADVOCATES.....APPLICANT

VERSUS

MICRO-CITY COMPUTERS LIMITED.....DEFENDANT

RULING

1. By a **Notice of Motion** application dated **1st February, 2019** brought under **Sections 1A and 1B** of the **Civil Procedure Act, Cap 21, Section 51(2)** of the **Advocates Act, Cap 16 Laws of Kenya** and **Order 51 rule 1** of the **Civil Procedure Rules**, the Applicant prays for the following Orders:-

a. This Court be pleased to issue an Order of entry of Judgment in favour of the Applicant M/S Sherman Nyongesa & Mutubia Company Advocates against the Respondent, Micro-City Computers Limited in the sum of **Kshs.146,575/= on the basis of the Certificate of Costs dated **16th August, 2018** together with interest at court's rate from **18th July, 2018** until payment in full;**

b. That this Honourable Court be pleased to adopt and endorse the Certificate of Costs dated **16th August, 2018 as the Decree of the Court for purposes of execution;**

c. That the Costs of this application be provided for.

2. The **Motion** is premised on the ground that pursuant to a **Letter of Offer** by the Respondent's Landlord, the Applicant prepares and lodged for registration a Lease document in favour of the Respondent sometimes in **November 2015** to which services and retainer are undisputed. That the Respondent reneged its obligation to pay the legal costs which prompted the filing of **Advocate-Client Bill of Costs** dated **15th February, 2018**. The said bill was taxed at **Kshs.146,575/=** and a **Certificate of Cost** issued to that effect on **16th August, 2018**.

3. The application is further supported by an **Affidavit of Winnie Owiti**, an Advocate of the High court of Kenya and sworn on **1st February 2019**, to which is annexed the **Certificate of Costs** marked "**NW-1**".

4. The application is opposed on the grounds set out in a **Replying Affidavit** sworn on **17th May, 2019** and a **Supplementary Affidavit** sworn on **6th November 2020**, both by the Respondent's Managing Director, **Paul Okolo Ananga**. He deposed that the Respondent has never been served with any **Bill of Costs** nor any **Notice of Taxation** as required by law. Further that the Respondent only came to know of these proceedings after having been served with the present application hence the application cannot stand, having been filed unprocedurally and ought to be dismissed with costs.

5. In the **Supplementary Affidavit**, **Mr. Paul Okolo Ananga** deposed that the Respondent has made part payment of **Kshs.92,000/=** and is making arrangements to settle the outstanding balance thereof, a fact which has not been disclosed to court.

6. At the hearing of the application on **18th November, 2020**, **M/S Naliaka**, Counsel for the Applicant conceded that the Respondent had made part payment of **Kshs.92,000/=**. She submitted that the Applicant now seeks **Judgment** to be entered in its favour for the outstanding sum of **Kshs.54,575/=** pursuant to the **Certificate of Costs** dated **16th August, 2018**. The Learned Counsel further sought for costs and interest in the matter.

Analysis and Determination

7. I have considered the application and the grounds in support and opposition thereof as set in the parties' respective Affidavits. I have also

considered oral submissions by parties' Counsels. I find the facts of this matter straight forward.

8. The Advocates filed their **Advocate-Client Bill of Costs** dated **15th February, 2018** for taxation and determination of their fees. The **Bill of Costs** was taxed on **18th July, 2018** by the Taxing Officer of this court and allowed in the sum of **Kshs.146,575/=**. A **Certificate of Costs** was issued and is dated **16th August, 2018**. It is worth noting that the said Certificate has not been set aside thus the issue of the Advocate's cost is conclusive and overrules the assertion by the Respondent that they were never served with the Bill of Costs.

9. Now, the Applicant's Advocates are seeking to have the **Certificate of Costs** adopted as **Judgment** through the present application, save for the part payments that have been made by the Respondent. In the case of **Musyoka & Wambua Advocates...Vs...Rustam Hira Advocate (2006)eKLR**, it was held:-.

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter Judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit....”

10. Further, **Paragraph 11** of the **Advocates Remuneration Order** provides that:-:

“Where a party is aggrieved by the decision of a taxing officer, he is required to object in writing by requesting the taxing officer to give reasons for the items of taxation that he is objecting to and thereafter file reference to this court.”

11. Despite the allegations by the respondent that it was never served with the **Bill of Costs** or any **Notification of Taxation**, the Respondent has not filed a **Reference** to this court to challenge the decision of the Taxing Officer. The bill cannot therefore be challenged by way of a **Replying Affidavit**, and as it stands now, the **Certificate of Taxation** has not been set aside or altered. In the circumstances, I see no reason as to why this court should deny the Applicant's Advocates the **Judgement** as sought.

12. The upshot of this is that the **Notice of Motion** application dated **1st February, 2019** succeeds and is hence allowed in the following terms:-

a. Judgment be and is hereby entered for the Applicant's advocates against the Respondent for the sum of Kshs.54,575/=.

b. The Applicant will also have the costs of this application.

It is so ordered.

DATED, SIGNED and DELIVERED at MOMBASA on this 26th day of November, 2020.

D. O. CHEPKWONY

JUDGE

In view of the declaration of measures restricting court operations due to the **COVID-19** pandemic and in light of the directions issued by His Lordship the Chief Justice on **15th March 2020**, this Ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules** which requires that all Judgments and Rulings be pronounced in open Court.

D. O. CHEPKWONY

JUDGE