



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

MISC. APPLICATION NO 66 OF 2019

BETWEEN

NGAYWA NGIGI & KIBET ADVOCATES.....ADVOCATE/APPLICANT

AND

XPLICO INSURANCE COMPANY LIMITED.....CLIENT

JUDGMENT

1. By a notice of motion dated 16th January, 2019 filed on even date, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya (*hereinafter referred to as the Act*), the Advocate/Applicant prays for orders:

1) THAT judgment be entered in favour of the Applicant for the sum of Kenya Shillings One Hundred and Forty Thousand, Nine Hundred Fifteen (Kshs. 145, 915.00) being the costs due to the Applicant as against the Respondent.

2) That the Respondent do pay the Applicant the costs of this application with interest on taxed costs

2. The motion is premised on the grounds the Advocate/Applicant was retained by the client to act in **MERU CMCC NO. 146 OF 2018 TERESIAH KALAYU JULIUS (suing as the administrator of the Estate of Julius Machamura Ituru) V XPLICO INSURANCE COMPANY LIMITED** and has refused, failed and/or neglected to settle the taxed advocate's fees.

3. When the application came for hearing on 15th December, 2020, the client, though served on 13th November, 2020 did not file a response to the application or send a representative. The application is therefore unopposed.

4. Section 51 of *the Act* makes general provisions for entry of judgment on a Certificate of Taxation which has not been set aside or altered where there is no dispute as to retainer.

5. In the present case, there is no allegation that the Advocate had no instructions to act for the client in **MERU CMCC NO. 146 OF 2018 TERESIAH KALAYU JULIUS (suing as the administrator of the Estate of Julius Machamura Ituru) V XPLICO INSURANCE COMPANY LIMITED** for which costs were taxed. The Certificate of Taxation dated 10th December, 2019 has neither been set aside nor altered and I see no reason to deny the Advocate/Applicant, judgment as sought.

6. I have considered the provisions of Rule 7 of the Advocates Remuneration Order which provides for interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full. In an affidavit of service sworn and filed on 05th August, 2019, by MAXWELL TIMOTHY OYOMBERA, a process server avers that the bill was served on the client on 31st July, 2019. Interest is therefore payable from 30th August, 2019.

7. The upshot of this is that the notice of motion dated 16th January, 2019 succeeds and is allowed in the following terms:

a) Judgment is hereby entered for the advocate against the Respondent for Kenya Shillings One Hundred and Forty Thousand, Nine Hundred Fifteen (Kshs. 145, 915.00)

b) Interest shall accrue on the taxed costs at 14% per annum from 30th August, 2019 until payment in full

c) The Advocate/Applicant will also have the costs of this application.

DATED AT MERU THIS 15th DAY OF December 2020

T.W. CHERERE

JUDGE

For the Advocate/Applicant - Ms. Ngigi for Ngaywa Ngigi & Kibet Advts

For the Client - N/A