



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC.APP.NO. 37 OF 2018

IN THE MATTER OF THE ADVOCATES ACT

BETWEEN

SOPHIE CHIRCHIR

t/a CHERONO CHIRCHIR & CO.ADVOCATES.....APPLICANT

VERSUS

AFRICA MERCHANT ASSURANCE CO.LTD.....RESPONDENT

RULING

1. The application is dated the 19th September, 2018 and is brought under the provisions of Section 51(2) of the Advocates Act, paragraph 7 of the Advocates Remuneration Order and Order 51 Rule 1 of the Civil Procedure Rules; the applicant seeks the following orders;

(i) That judgment be entered for the applicant against the respondent for the sum of Kenya Shillings Two Hundred and Eighty Two Thousand, Three Hundred Sixty Five (KShs.282,365/-) plus interest thereon at 14% per annum from 20th day of July, 2018 until payment in full;

(ii) The costs of the application be provided for.

2. The applicant relies on the grounds on the face of the application and on the Supporting Affidavit made on the same date by **SOPHIE CHIRCHIR ADVOCATE** who deponed that the Bill of Costs filed on the 18/04/18 was taxed on the 20/07/18 against the respondent for the sum of KShs.282,365/- and a Certificate of Costs issued on the 5/09/18; the respondent was duly served with the application and did not file a response to the same; a hearing notice and a return of service duly filed; and was not in attendance on the date set for hearing of the application;

3. As the application and the retainer are uncontested and no appeal has been filed or the Certificate of Costs set aside the applicant prayed that judgment be entered as prayed;

ISSUES FOR DETERMINATION

4. After reading the supporting affidavit filed herein this court finds only one issue for determination which is whether the conditions of Section 51(2) of the Advocates Act have been satisfied by the applicant;

ANALYSIS

5. The applicable law is found at Section 51(2) of the Advocates Act which 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.”

6. This section gives this court the jurisdiction to enter judgment provided the Bill of Costs has been taxed and the taxing master has issued a Certificate of Costs; in this instance this has been done and the certificate has not been appealed against, set aside or varied; as noted earlier the respondent has not filed any response stating that it disputes any retainer;

7. In the light of the above this court is satisfied that from the material placed before it that all the conditions as set out in Section 51(2) of the Act have been satisfied and that this is 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 sum; reference is made to the case **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.*”

FINDINGS AND DETERMINATION

8. In the light of the foregoing this court makes the following findings and determinations;

- (i) This court finds that all the conditions set down in Section 51(2) of Advocates Act have been satisfied; the application is found to have merit and is hereby allowed;
- (ii) Judgment is hereby entered in favour of the applicant against the respondent in the sum of Kshs.282,365/- plus interest thereon at court rates;
- (iii) The applicant shall have costs of the application.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 21st day of February, 2019.

HON. A. MSHILA

JUDGE