



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC.APPLICATION CASE NO. 87 OF 2016

MORGAN OMUSUNDI T/A MORGAN OMUSUNDI

LAW FIRM ADVOCATES.....APPLICANT

VERSUS

EUNICE CHERUTO BUNDOTICH.....RESPONDENT

RULING

The applicant filed this application on 11th May 2017 seeking orders that the assessment and/or taxation of the applicant's costs be adopted as judgment of the court and the costs be provided for. The application is based on the grounds that the costs were taxed by consent in the sum of Kshs.30,000/- and there is no dispute as to the issue of retainership. Further, that the value of services rendered has been determined by the recorded consent and there has been no reference challenging the consent outcome of the taxation.

APPLICANT'S CASE

The application is brought under *Section 51(2)* of the *Advocates Act* and is for the adoption of the certificate of costs as judgment of the court. It is dated 7th February, 2017 which resulted from a consent order. It was endorsed by the Deputy Registrar. The judge needs endorse it for purposes of execution.

The application is unopposed and the judge had issued directions. They were extracted as an order. The applicant was directed to serve the application and complied. The current application was filed to achieve what was amiss. The current application is in compliance with the other application.

RESPONDENT' CASE

There is a related application dated 27th March 2017. The respondent objects to the applicant's position. The court gave orders in relation to execution of the consent. The court directed that the consent orders had not yet been adopted. The application is still pending. The respondent was to answer to it. The application is meant to defeat the observation made by the court.

ISSUES FOR DETERMINATION

- (a) Whether the prayers sought in the application should be granted.

Section 51(2) of the *Advocates Act* read 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 judgement be entered for the sum certified to be due with costs.”

There is no dispute as to retainership and the certificate has not been set aside or altered by the court.

The orders granted on 30th March 2017 by the court state that the consent order is yet to be formally adopted by the judge or endorsed by the Deputy Registrar. The court also ordered that the application be served upon the respondent for inter-partes hearing to be taken at the registry. The initial application mentioned by the respondent was already determined by those orders.

As per the supporting affidavit it is apparent that the certificate of costs was endorsed by the registrar. The application, I do find, is meant to

ensure the orders of the court of 30th March 2017 are complied with. The court adopts the taxation by consent as the judgment and decree of the court as prayed.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 24th day of April, 2019.

In the absence of:-

Mr. Omusundi for Plaintiff/Applicant

Mr. Bitok for Defendant/Respondent

Mr. Etyang - Court clerk