



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISC. APPLICATION NO. 146 OF 2018**

**IN THE MATTER OF THE ADVOCATES ACT,**

**CAP 16 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF TAXATION OF COSTS**

**BETWEEN**

**ADVOCATES & CLIENT IN THE**

**MISC. APPLICATION NO. 146 OF 2018**

**PROF. MUSILI WAMBUA & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**MICHAEL MWONGERA ARIMBI.....1<sup>ST</sup> RESPONDENT**

**JEAN MUTHONI ARIMBI.....2<sup>ND</sup> RESPONDENT**

**EXPLORER HOLDINGS**

**INTERNATIONAL LTD.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling relates to a notice of motion dated 21<sup>st</sup> December 2018, brought under the provisions of Section 51(2) of the Advocates Act (Cap 16) of the Laws of Kenya Section 3A of the Civil Procedure Act (Cap 21) of the Laws of Kenya, Order 50 Rule 1 of the Civil Procedure Rules and all the enabling provisions of the law.

2. The Applicant is seeking that;

*(a) the court be pleased to order that the amount of Kshs. 460,605 only certified on the certificate of taxation herein dated 6<sup>th</sup> November 2018 be entered as judgment of the Honourable Court against the Respondents;*

*(b) the taxed costs do attract interest at the rate of 14% per annum from the date of delivery of the Bill of Costs being 19<sup>th</sup> October 2018 until payment in full;*

*(c) a decree be issued in respect of the certificate of taxation dated 6<sup>th</sup> November 2018 and that the Applicant be at liberty to execute for recovery of the same in such a manner as if it was a decree of the Honourable court;*

*(d) that the Respondents be condemned to pay the costs of the application.*

3. The application is based on the grounds on the face of it and an affidavit dated 20<sup>th</sup> December 2018, sworn by Obat Wasonga, an Advocate of the High Court of Kenya practicing in the Applicant's firm. He deposed that the Applicant acted for the Respondents in various property transactions where Respondents were purchasing residential properties. However, the Respondents refused, neglected and/or failed to settle the fee notes raised in respect of services rendered.

4. As a result whereof, the Applicant filed a bill of costs dated 21<sup>st</sup> March 2018 which was taxed on 19<sup>th</sup> October 2018 and a certificate of taxation for the sum claimed herein issued. The Applicant notified the Respondents of the taxed costs, but the Respondents despite numerous notices have refused, neglected and/or failed to settle the taxed costs.

5. The Respondents did not appear in court to defend the application despite the fact that, they were served with the application and the hearing notice as evidenced by the affidavit of service dated 14<sup>th</sup> February 2019, sworn by Martin Muriuki an authorized court process server. He deposed that, he served the said documents upon the firm of Arimi Kimathi & Company Advocates at Bemuda Plaza, 2<sup>nd</sup> Floor, Ngong Road Nairobi. The copy of the of the notice of motion application served on the Respondents reveals an acknowledgement stamp dated 15<sup>th</sup> January 2019 endorsed by the Respondents' law firm.

6. The application was heard on 8<sup>th</sup> May 2019 unopposed. I have considered the same in the light of the affidavit of service and the annexures thereto. The guiding legal principles herein are the provisions of Section 51 of the Advocates Act, which provides that:-

*(1) "Every application for an order for the taxation of an Advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an Advocate shall be made in the matter of that Advocate;*

*(2) 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. These provisions of; Section 51(2) of the Advocates Act, gives the court the discretion to make orders as it deems appropriate and just, in relation to the certificate of the taxing master unless the retainer is disputed. In that regard, the court can make an order that judgment be entered for the sum certified in the certificate of taxation costs. The certificate of the taxing master shall be final as to the amount covered therein, unless it has been set aside, varied and/or altered otherwise.

8. In the instant case, the Applicant has annexed to the affidavit in support of the application, a letter dated 8<sup>th</sup> November 2018 written to the Respondents' lawyer notifying them of the issuance certificate of taxation herein and demanding for immediate action by the Respondents. The Respondents did not respond to it. Also annexed to the affidavit is the said certificate issued by the Deputy Registrar dated 6<sup>th</sup> November 2018, in the sum of Kenya shillings four hundred and sixty thousand six hundred and five (Kshs.460,605). There is no evidence that the same has been challenged, varied and/or set aside. Neither is there evidence that, the retainer is in dispute. In that regard, I find that the application herein has merit and I allow it in terms of prayer (1), (2) and (3) save that the interest payable shall be from the 6<sup>th</sup> November 2018 the date of notification of the certificate to the Respondents.

9. Those are the orders of the court.

**Dated, delivered and signed in an open court this 30<sup>th</sup> day of May 2019.**

**G.L. NZIOKA**

**JUDGE**

**In the presence of:**

**Ms. Wambua for Ms. Wesonga for the Applicant**

**No appearance for the Respondents**

**Dennis .....Court Assistant**