



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 175 OF 2018

(CONSOLIDATED WITH MISC. CIVIL APPLICATION NO 176 AND 177 OF 2018

BETWEEN

L.G. MENEZES & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

AND

AFRICAN MERCHANT ASSURANCE

COMPANY LIMITED.....RESPONDENT/CLIENT

JUDGMENT

1. By a notice of motion dated 10th June, 2019, brought under Section 51(2) of the Advocates Act, 2009 Cap 16 Laws of Kenya and Section 3A of the Civil Procedure Act; the applicant prays for orders: -

a. THAT judgment be entered for the Applicant against the Respondent for the taxed Costs as per the Certificate of Costs dated 8th October, 2018 together with interest at 14% from 8th October, 2018 till payment in full

b. That the order to apply to KISUMU MISC. CIVIL APPLICATION NO 176 and 177 OF 2018

c. THAT costs of the application be provided for

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn on 10th June, 2019 by **DANCAN OTIENO NJOGA**, Advocate for the Applicant. He avers that the Bill of Costs **KISUMU MISC. CIVIL APPLICATION NO 175, 176 and 177 OF 2018** were taxed at **Kshs. 195,679/-; Kshs. 100,251/- and Kshs. 107,559/-** respectively and has annexed Certificates of Costs dated 29th April, 2019. He additionally avers that the client has not paid the said amounts and requests for judgment for the entire sum.

3. When the application came for hearing on 20th June, 2019, the respondent though served with the application did not attend send a representative to court and the application is therefore unopposed.

4. Section 51 of the Advocates 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.

5. There is no dispute as to retainer. As it stands now the Certificates of Taxation for **Kshs. 195,679/-; Kshs. 100,251/- and Kshs. 107,559/-** dated 29th April, 2019 have neither been set aside nor altered. In the circumstances, I see no reason to deny the Advocate, judgment as sought.

6. Rule 7 of the Advocates Remuneration Order provides that: -

“An advocate may charge 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.”

7. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of Costs. There is evidence that the Bill of Costs were served by registered post on 20th August, 2018 and interest is therefore payable from 20th September, 2018.

8. The upshot of this is that the notice of motion dated 10th June, 2019 succeeds and is allowed in the following terms:

a. Judgment is hereby entered for the advocate against the Respondent in KISUMU MISC. CIVIL APPLICATION NO 175, 176 and 177 OF 2018 for the sum of Kshs. 195,679/-; Kshs. 100,251/- and Kshs. 107,559/- respectively

b. Interest shall accrue on the taxed costs at 14% per annum from 20th September, 2018 until payment in full

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

DATED AND SIGNED IN KISUMU THIS 27th DAY OF June, 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For the Applicant /Advocate - Mr.Njoga

For the Respondent/Client - N/A