



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**MISC. CIVIL APPLICATION NO 172 OF 2018**

**(CONSOLIDATED WITH MISC. CIVIL APPLICATION NO 173 AND 174 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 10<sup>th</sup> 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 01<sup>st</sup> October, 2018 together with interest at 14% from 01<sup>st</sup> October, 2018 till payment in full**
- b) **That the order to apply to KISUMU MISC. CIVIL APPLICATION NO 173 and 174 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 10<sup>th</sup> June, 2019 by **DANCAN OTIENO NJOGA**, Advocate for the Applicant. He avers that the Bill of Costs **KISUMU MISC. CIVIL APPLICATION NO 172; 173 and 174 OF 2018** were taxed at **Kshs. 110,000/-; Kshs. 83,708/- and Kshs. 119,095/-** respectively and has annexed Certificates of Costs dated 29<sup>th</sup> 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 20<sup>th</sup> 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. 110,000/-; Kshs. 83,708/- and Kshs. 119,095/-** dated 29<sup>th</sup> 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 20<sup>th</sup> August, 2018 and interest is therefore payable from 20<sup>th</sup> September, 2018.

8. The upshot of this is that the notice of motion dated 10<sup>th</sup> 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 172; 173 and 174 OF 2018 for the sum of Kshs. 110,000/-; Kshs. 83,708/- and Kshs. 119,095/- respectively***

***b) Interest shall accrue on the taxed costs at 14% per annum from 20<sup>th</sup> September, 2018 until payment in full***

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

**DATED AND SIGNED IN KISUMU THIS 27<sup>th</sup> 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**