



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION NO 48 OF 2019**

**OTIENO YOGO & COMPANY ADVOCATES.....APPLICANT/ADVOCATE**

**VERSUS**

**NATIONAL IRRIGATION BOARD.....RESPONDENT/CLIENT**

**JUDGMENT**

1. By a notice of motion dated 25<sup>th</sup> June, 2019, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya (*hereinafter referred to as the Act*) and Order 11 (3) (1)(h) of the Civil Procedure Rules; the Applicant prays for orders:

**1) THAT this Honourable Court be pleased to convert the certificate of costs issued on 07<sup>th</sup> June, 2019 into decree and judgment be entered for the Applicant together with costs and interest at 14% p.a from 7<sup>th</sup> June, 2019 until payment in full**

**2) THAT the costs of this application be awarded to the Applicant**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn by of ERICK OJURO, Advocate of the High Court of Kenya, on 25<sup>th</sup> June, 2019. Annexed to the affidavit is a certificate of taxation dated 07<sup>th</sup> June, 2019 for the sum of **Kshs. 462,725/-**.

3. When the application came for hearing on 23<sup>rd</sup> July, 2019, the Respondent, though served on 18<sup>th</sup> July, 2019 did not oppose the application or send a representative. The application is therefore unopposed.

4. Section 51 of *the Act* makes general provisions for entry of judgment on a Certificate of Taxation which has not been set aside or altered where there is no dispute as to retainer.

5. In the present case, there is no allegation that the Advocate had no instructions to act for the client in **PETITION NO. 27 OF 2014 SAMUEL OLWENY & 3 OTHERS V NATIONAL IRRIGATION BOARD** for which costs were taxed and so, there cannot be, a dispute as to retainer. As it stands now the Certificate of Taxation has not been set aside or altered. In the circumstances, I see no reason to deny the Advocate, judgment as sought.

6. I have considered the provisions of Rule 7 of the Advocates Remuneration Order which provides: -

***“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 was received by the respondent on 03<sup>rd</sup> May, 2019 and thirty (30) days from the delivery of the bill to the client expired on 03<sup>rd</sup> June, 2019.

8. The upshot of this is that the notice of motion dated 25<sup>th</sup> June, 2019 succeeds and is allowed in the following terms:

***a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 462,725/-.***

***b) Interest shall accrue on the taxed costs at 14% per annum from 03<sup>rd</sup> June, 2019 until payment in full***

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

**DATED AND DELIVERED ON THIS 31<sup>st</sup> DAY OF July 2019**

**T.W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant - Felix**

**For the Applicant /Advocate - Mr Theuri/Mr Yogo**

**For the Respondent/Client - N/A**