



**REPUBLIC OF KENYA**

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

**(CORAM: CHERERE-J)**

**MISC. CIVIL APPLICATION NO 59 OF 2019 (CONSOLIDATED WITH MISC. CIVIL APPLICATION NO 60-66; 68-78 OF**

**2019)**

**BETWEEN**

**L.G. MENEZES & COMPANY ADVOCATES.....ADVOCATE**

**AND**

**AFRICAN MERCHANT ASSURANCE COMPANY LTD.....CLIENT**

**JUDGMENT**

1. By a notice of motion dated 27th November, 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: -

1) THAT judgment be entered for the Applicant against the Respondent for the taxed Costs as per the Certificate of Costs dated 29th August, 2019 together with interest at 14% from 28th July, 2019 till payment in full

2) THAT costs of the application be provided for

2. The motion is premised on the grounds among others that the taxed costs remain unpaid. The application is supported by an affidavit sworn on 27th November, 2019 by DANCAN OTIENO NJOGA, Advocate for the Applicant. Annexed to the affidavit are Certificates of Costs for various sums dated 29th April, 2019 and issued on 06th September, 2019 in respect of each of the aforementioned 19 files. He additionally avers that the client has not paid the said amounts and requests for judgment in respect of the sums thereto.

3. When the application came for hearing on 11th December, 2019, the respondent though served with the application neither attended nor sent a representative to court and 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. There is no dispute as to retainer. As it stands now the Certificates of Taxation in this application have neither been set aside nor altered. In the circumstances, I see no reason to deny the Advocate, judgment as sought.

6. In the present case, there is no allegation that the Advocate had no instructions to act for the client in the respective cases in which the Bills of Costs were taxed. The Certificate of Taxation has not been set aside or altered and I see no reason to deny the Advocate, judgment as sought.

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 01st July, 2019 and interest is therefore payable from 01st August, 2019.

8. The upshot of this is that the notice of motion dated 27th November, 2019 succeeds and is allowed in the following terms:

1) Judgment is hereby entered for the advocate against the Respondent as follows:

a) KISUMU MISC. CIVIL APPLICATION NO 59 OF 2019 for the sum of Kshs. 140,412/- (One hundred forty thousand, four hundred twelve)

- b) KISUMU MISC. CIVIL APPLICATION NO 60 OF 2019 for the sum of Kshs. 83, 824/- (Eighty-three thousand, eight hundred twenty-four)
- c) KISUMU MISC. CIVIL APPLICATION NO 61 OF 2019 for the sum of Kshs. 74,900/- (Seventy-four thousand, nine hundred)
- d) KISUMU MISC. CIVIL APPLICATION NO 62 OF 2019 for the sum of Kshs. 75,745/- (Seventy-five thousand, seven hundred forty-five)
- e) KISUMU MISC. CIVIL APPLICATION NO 63 OF 2019 for the sum of Kshs. 63,988/- (Sixty-three thousand, nine hundred eighty-eight)
- f) KISUMU MISC. CIVIL APPLICATION NO 64 OF 2019 for the sum of Kshs. 72,862/- (Seventy-two thousand, eight hundred sixty-two)
- g) KISUMU MISC. CIVIL APPLICATION NO 65 OF 2019 for the sum of Kshs. 111,875/- (One hundred eleven thousand, eight hundred seventy-five)
- h) KISUMU MISC. CIVIL APPLICATION NO 66 OF 2019 for the sum of Kshs. 74,125/- (Seventy-four thousand, one hundred twenty-five)
- i) KISUMU MISC. CIVIL APPLICATION NO 68 OF 2019 for the sum of Kshs. 150,814.50 cts (One hundred fifty thousand, eight hundred fourteen and fifty cents)
- j) KISUMU MISC. CIVIL APPLICATION NO 69 OF 2019 for the sum of Kshs. 220,948/- (two hundred and two thousand, nine hundred forty- two)
- k) KISUMU MISC. CIVIL APPLICATION NO 70 OF 2019 for the sum of Kshs. 118,898 (One hundred eighteen thousand, eight hundred ninety- eight)
- l) KISUMU MISC. CIVIL APPLICATION NO 71 OF 2019 for the sum of Kshs. 139,764/- (One hundred thirty-nine thousand, seven hundred sixty-four)
- m) KISUMU MISC. CIVIL APPLICATION NO 72 OF 2019 for the sum of Kshs. 89,388/- (Eighty-nine thousand, three hundred eighty-eight)
- n) KISUMU MISC. CIVIL APPLICATION NO 73 OF 2019 for the sum of Kshs. 82,466/- (Eighty-two thousand, four hundred sixty-six)
- o) KISUMU MISC. CIVIL APPLICATION NO 74 OF 2019 for the sum of Kshs. 63,988/- (Sixty-three thousand, nine hundred eighty-eight)
- p) KISUMU MISC. CIVIL APPLICATION NO 75 OF 2019 for the sum of Kshs. 86,086/- (Eighty-six thousand, eighty-six)
- q) KISUMU MISC. CIVIL APPLICATION NO 76 OF 2019 for the sum of Kshs. 71,685/- (Seventy-one thousand, six hundred eighty-five)
- r) KISUMU MISC. CIVIL APPLICATION NO 77 OF 2019 for the sum of Kshs. 98,797/- (Ninety-eight thousand, seven hundred ninety-seven)
- s) KISUMU MISC. CIVIL APPLICATION NO 78 OF 2019 for the sum of Kshs. 195,478/- (One hundred ninety-five thousand, four hundred seventy-eight)

2) Interest shall accrue on the taxed costs at 14% per annum from 01.08.19 until payment in full

3) The Advocate shall also have the costs of this application.

**DATED AND SIGNED IN KISUMU THIS.....18th.....DAY OF...December....2019**

**T.W. CHERERE**

**JUDGE**

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

**Court Assistant - Amondi/Okodoi**

**For the Advocate** - Mr Njoga

**For the Client** - N/A