



**REPUBLIC OF KENYA**

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

**MISC. APPL. NO. 41 OF 2016**

**IN THE MATTER OF THE ADVOCATES ACT**

**AND**

**IN THE MATTER OF ADVOCATE – CLIENT BILL OF COSTS**

**BETWEEN**

**SOPHIE CHIRCHIR t/a CHERONO CHIRCHIR & CO**

**ADVOCATES.....APPLICANTS**

**VS**

**AFRICA MERCHANT ASSURANCE CO. LTD.....RESPONDENT**

**RULING**

The application before me is the Notice of Motion dated 29<sup>th</sup> March 2017 and headed as brought under section 55(2) of the Advocates Act and Order 51 of the Civil Procedure Rules.

It is supported by the affidavit sworn by Sophie Chirchir on 29<sup>th</sup> March 2017.

The applicant Sophie Chirchir T/A Cheronno Chirchir & Co. Advocates acted for Africa Merchant Assurance Co. in Nyeri CMCC No. 544/2012.

The firm filed a bill of costs which was taxed. They now seek orders that: -

Judgment be entered for the applicant against the respondent for the sum of Ksh. 139,931/16 plus interest thereon at 9% p.a. from 3<sup>rd</sup> February 2017 until payment to the full, and that the costs be provided for.

The application was duly served on the respondent. There is no replying affidavit/grounds of opposition filed.

The application is supported by the written submissions of counsel, the applicant, which reiterate the contents of the application.

I have considered the application, the supporting affidavit and the submissions by counsel. The application is not opposed.

However, the wrong section of the law appears to have been cited.

It ought to be section 51(2) which provides ;

*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.*

The section 55 cited deals with issues unrelated to taxation.

However, the substance of the application clearly shows it is predicated on s.51(2) of the Advocates Act Cap 16. Under Article 159 of the Constitution, and sections 1A, 1B and 3A of the of the Civil Procedure Rules, I will consider it as having been brought under the proper provisions of the law.

Since it is not opposed the same is granted as prayed. There are no orders. as to costs.

**Teresia M Matheka**

**Judge**

**Dated, delivered and signed at Nyeri this 22<sup>nd</sup> day of January 2018**

**Court Assistant: Hariet**