



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI**  
**CIVIL CASE NO.1569 OF 2007**  
**IN THE MATTER OF ADVOCATE –CLIENT BILL OF COSTS**  
**UNDER THE ADVOCATES ACT (CAP16) LAWS OF KENYA**  
**BETWEEN**  
**CHEBET AND CHEBET ADVOCATES.....APPLICANT/ADVOCATE**  
**AND**  
**SAVINGS & LOAN KENYA LIMITED.....RESPONDENT/CLIENT**  
**R U L I N G**

This is a ruling on Notice of Motion dated 22<sup>nd</sup> November 2017 seeking to enter judgement for the Plaintiff against the Respondent for a sum of Kshs. 2,919,354.00 being bill of costs agreed between parties herein in respect of Advocate-Client Bill of Costs filed on 25<sup>th</sup> October 2007.

The Respondent filed ground of opposition to the application herein dated 7<sup>th</sup> March 2018. The Respondent seeks to have the application struck out for being brought 10 years after the decision was made; that the application is time barred and should be struck out.

Counsels herein did oral submissions.

Counsel for the Applicant submitted that the bill of costs was taxed by consent on 17<sup>th</sup> December 2008 and Certificate of Costs issued on 13<sup>th</sup> January 2018. She submitted that to date the certificate has not been challenged.

Counsel for the Respondent restated grounds of opposition filed. She submitted that taxation took about 10 years ago. She said it was a judgment for assessment of costs. She submitted that under Section 4 (4) of the Limitation of Actions Act, a claim for costs is a contractual claim which should be made within 6 years. She submitted that the consent was a contract between the parties herein and that no action has been taken for 9 years. She submitted that it is not an action that can be brought under Section 51 of the Advocates Act. That they are asking costs for 10 years; that the Respondent should not be burdened with costs.

**ANALYSIS AND DETERMINATION**

Issues for consideration

1. Whether consent is a contract between parties,
2. Whether interest should be paid.

On perusal of the file I note that parties herein recorded consent dated 15<sup>th</sup> December 2008 and filed on 17<sup>th</sup> December 2008 for the bill to be taxed at Kshs. 2,919,354. The Deputy Registrar issued Certificate of Cost dated 13<sup>th</sup> January 2017.

It is evident that the consent was recorded in respect to taxation Bill of Costs. The same was to be adopted as a judgement of the Court upon adoption of certificate issued by the Deputy Registrar. It is evident that the issuance of certificate delayed. Issuance of Certificate of Costs is the duty of the Court and the parties have no control over it. The party entitled to taxed costs cannot apply for the costs to be adopted as

judgment of the Court before the Certificate of Costs is issued by the Registrar. The consent cannot be treated as a contract. It is of be treated as a judgment of the Court upon adoption by the High Court.

On the issue of interest note that the consent recorded in Court by the parties herein has not been challenged. The Respondent was aware of the costs and should have paid after recording consent to avoid additional interest.

**FINAL ORDERS**

Certificate of Costs dated 13<sup>th</sup> January 2017 for Kshs. 2,919,354 is adopted as the judgement of this Court. Interest from date of filing this suit.

**Dated and Delivered at Nairobi this 31<sup>st</sup> day of July, 2018**

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**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF**

CATHERINE: **COURT ASSISTANT**

MS. LWILA H/B FOR MR. MWINYI: **FOR RESPONDENT/CLIENT**

MS. SOSI: **COUNSEL FOR APPLICANT/ADVOCATE**