



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**MISC APPLICATION NO 393 OF 2016**

**GITONGA MUREITHI & CO ADVOCATES.....ADVOCATE**

**VERSUS**

**MIDDLE EAST CONSULTING SERVICES LIMITED.....CLIENT**

**RULING**

**INTRODUCTION**

1. The Advocate's Notice of Motion application dated on 8<sup>th</sup> March 2018 and filed on 13<sup>th</sup> March 2018 was brought pursuant to the provisions of Section 51(2) of the Advocates Act, Rule 13A of the Advocates Remuneration Order, Section 3A and 63 (e) of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules. The application sought the following prayers:-

- 1. THAT judgment be entered against the Respondent in the sum of Kshs 166,000.00 as per the Certificate of Taxation dated 8<sup>th</sup> February 2018.**
- 2. THAT the judgment do attract interest at the rate of 14% per annum from 28<sup>th</sup> July 2018 until payment in full.**
- 3. THAT the costs of this application be borne by the Respondent.**

2. When the matter came up in court on 10<sup>th</sup> May 2018, the Client's advocates sought time to file a Replying Affidavit. This court granted them leave and directed that the matter be mentioned on 6<sup>th</sup> June 2018 to confirm compliance and/or for further orders and/or directions. Notably, this court granted the Client's advocates leave to file and serve their Replying Affidavit despite them having been served with the Advocate's present application on 13<sup>th</sup> March 2018 when the same was filed.

3. As the advocates for the advocates herein were not served with any Replying Affidavit, they filed their Written Submission dated 5<sup>th</sup> June 2018 on even date. Technically, the Advocate's present application was unopposed as the Client never filed a Replying Affidavit or Grounds of Opposition in response to the said application.

4. When the matter came up in court on 6<sup>th</sup> June 2018, the Client's advocates indicated that they did not file their Replying Affidavit but that they had instead filed a Notice of Motion application dated 14<sup>th</sup> May 2018 on 15<sup>th</sup> May 2018 seeking enlargement of time within which to file a Reference of the Taxation.

5. In view of the inordinate delay in the Client filing its Notice of Motion application seeking to file a Reference to the Taxation, the Ruling having been delivered by the Taxing Master on 25<sup>th</sup> January 2018, and the filing of the said application outside this court's directions, this court declined the Client's advocates request to have their application heard first as it perceived it to have been a delaying tactic.

6. This court took this route as it was minded of the provisions of Section 1A (1) of the Civil Procedure Act Cap 21 (Laws of Kenya) which stipulate that **"the overriding objective is to facilitate the just, expeditious, proportionate and affordable resolution of Civil disputes"** and Article 159 (2) (b) of the Constitution of Kenya, 2010 where it is stated that **"justice shall not be denied"**.

**DISPOSITION**

7. Accordingly, the upshot of this court's ruling was that the Advocate's Notice of Motion application dated 8<sup>th</sup> March 2018 and filed on 13<sup>th</sup> March 2018 was merited and is hereby allowed as prayed.

8. It is so ordered.

**DATED** and **DELIVERED** at **NAIROBI** this **25<sup>th</sup>** day of **September** 2018

**J. KAMAU**

**JUDGE**