



**REPUBLIC OF KENYA**

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

**(CORAM: CHERERE-J)**

**MISC. CIVIL APPLICATION NO 165 OF 2018**

**MAUWA & COMPANY ADVOCATES.....APPLICANT/ADVOCATE**

**VERSUS**

**MUSIC PUBLISHERS ASSOCIATION OF KENYA.....1ST RESPONDENT/CLIENT**

**BENARD KIOKO T/A BERNSOFT GROUP LTD.....2ND RESPONDENT/CLIENT**

**JUDGMENT**

1. By a notice of motion dated 15.11.18, brought under Section 51 rule 1 of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

- a. THAT judgment be and is hereby entered for the applicant against the respondents for Kshs. 12,932,119.56 in accordance with the certificate of costs issued by the Deputy Registrar**
- b. Interest be awarded at 14% per annum from 15.11.18 until payment in full**
- c. THAT the costs of this application be provided for**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn by Robert Maua, advocate of the High Court of Kenya, on 15.11.18. He avers that the applicant acted for the clients in KISUMU PETITION NO. 11 OF 2017 KISUMU BAR OWNERS ASSOCIATION & ANOR VS MCSK & 2 OTHERS which was consolidated with KAKAMEGA PETITION NO. 3B OF 2017. That the bill of costs was taxed for the sum of Kshs. 12,932,119.56 and a certificate of taxation dated 15.11.18 was issued for the said sum. The applicant avers that the client has not paid the said amount despite of demand to do so.

3. When the application came for hearing on 29.11.18, the respondents though served neither appeared nor sent a representative. The application is therefore not opposed.

4. In the case of Musyoka & Wambua Advocates vs Rustam Hira Advocate (2006) eKLR it was held: -

**“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....**

5. In the present case, there is no allegation that the Advocate had no instructions to act for the client in KISUMU PETITION NO. 11 OF 2017 KISUMU BAR OWNERS ASSOCIATION & ANOR VS MCSK & 2 OTHERS which was consolidated with KAKAMEGA PETITION NO. 3B OF 2017 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 no evidence that the bill of costs was served on the respondents. There is evidence that the bill of costs was served on 20.8.18 and thirty (30) days from the delivery of the bill to the clients expired on 20.9.18.

8. The upshot of this is that the notice of motion dated 14.11.17 succeeds and is allowed in the following terms:

**a. Judgment is hereby entered for the advocate against the Respondents jointly and severally for Kshs. 12,932,119.56**

**b. Interest shall accrue on the taxed costs at 14% per annum from 20.9.18 until payment in full**

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

**DATED AND DELIVERED IN KISUMU ON THIS 20th DAY OF December, 2018**

**T.W. CHERERE**

**JUDGE**

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

**Court Assistant - Felix**

**For the Advocate/Applicant - Mr Muia**

**For the Respondents/Clients - N/A**