



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**HC. CIVIL MISC. APPL. NO. 156 OF 2014**

**OLANDO UDOTO & OKELLO ADVOCATE.....APPLICANT**

**VERSUS**

**JOHN CHOMBA T/A RANGE MERCHANT.....RESPONDENT**

**RULING**

1. The ruling dated 5<sup>th</sup> January, 2010 seeks orders that judgement be entered for the Applicant for Kshs.254,143/= together with interest at 14% per annum.

2. It is stated in the affidavit in support that the Applicant is an advocate of the High Court of Kenya. That on 10<sup>th</sup> February, 2012 the Applicant filed a memorandum of appearance and a statement of defence on behalf of the Respondent. That the Respondent subsequently terminated the Applicant's services. The Applicant filed a bill of costs which was taxed and the certificate of costs for Kshs.254,143/= issued. That the said certificate of taxation has not been set aside or altered and there is no dispute on retainer

3. In opposition to the application, the Respondent filed the replying affidavit sworn on 20<sup>th</sup> January, 2016 and filed in court on 21<sup>st</sup> January, 2016. The Respondent denied that he was the defendant in HCCC 1323 of 2001. That HCCC 1323 of 2001 was filed by Ms C.N. Kihara & Co. Advocates on behalf of the Respondent. That HCCC 1323 of 2001 was dismissed on 26<sup>th</sup> February, 2010 and the Applicant was instructed to apply for the reinstatement of the suit as Mr. Kihara was unwell. That the agreed total fees was agreed at Kshs.28,000/=. That the firm of Ms C.N. Kihara & Co. Advocates is the one handling HCCC 1323 of 2001 on behalf of the Respondent. The Respondent further stated that he instructed the firm of M. K. Chebii & Co Advocates to apply for the setting aside of the ruling on taxation but although the application was prepared, it was not filed.

4. When the application come up for hearing on 21<sup>st</sup> November, 2016, the counsels for the respective parties opted to canvass the application by way of written submissions. The Applicant's submissions dated 25<sup>th</sup> November, 2016 briefly reiterated the contents of their affidavit in support. It was stated that the Respondent has refused and/or declined to pay the taxed amount. The Respondent's submissions dated 2<sup>nd</sup> February, 2016 dealt with the application dated 28<sup>th</sup> September, 2016. Although there is on record an application filed on 28<sup>th</sup> September, 2016, the said application is yet to be fixed for hearing.

5. The retainer is not denied. The bill of costs was taxed at Kshs.254,143/=. A certificate of taxation was issued and has not been set aside. Section 51(2) of the Advocates Act provides as follows:

**“(2) 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.”**

6. With the foregoing, the Application is allowed with costs.

Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of March,2017

**B. THURANIRA JADEN**

**JUDGE**