



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO 21 OF 2017

ALFRED OCHIENG OPIYO t/a OCHIENG OPIYO & COMPANY ADVOCATES...APPLICANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT PARTY.....RESPONDENT

JUDGMENT

By a notice of motion dated 21.3.17, brought under Section 51(2) of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

a. THAT the certificate of costs issued by this Honourable Court be deemed as a decree and judgment in the sum of Kshs. 1,772,902.40/-

b. THAT the costs of this application be provided for

The motion is premised on the grounds on the body of the application and the supporting affidavit of Alfred Ochieng, Advocate of the High Court of Kenya, sworn on 21.3.17. He avers that the client instructed the advocate to act for it in **Election Petition No. 1 of 2013 Jared Odoyo Okelo v Fredrick Otieno Outa & Another.** That the bill of costs was taxed on 21.3.17 for the sum of Kshs. 1,772,902.40/- and a certificate of taxation was issued for the said sum. That the client has not paid the said amount and the applicant requests for judgment for the entire sum.

When the application came for hearing on 26.7.17, Mr. Emukule appeared for Mr. Ochieng for the client/applicant but the respondent though served did not send a representative. The application is therefore not opposed.

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.....

In the present case, there is no allegation that the Advocate had no instructions to act for the client in **Election Petition No. 1 of 2013 Jared Odoyo Okelo v Fredrick Otieno Outa & Anor** for which costs were taxed and so, there is not, and 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.

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.”

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 evidence that the bill of costs was received by the respondent on 14.3.17 and thirty (30) days from the delivery of the bill to the client expired on 13.4.17.

The upshot of this is that the notice of motion dated 21.3.17 succeeds and is allowed in the following terms:

- a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 1,772,902.40/-***
- b) Interest shall accrue on the taxed costs at 14% per annum from 13.4.17 until payment in full***
- c) The Advocate will also have the costs of this application.***

DATED AND DELIVERED ON THIS 27th DAY OF July 2017

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant - Mr Emukule

Respondent N/A