



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION NO 255OF 2016**

**OTIENO YOGO & COMPANY ADVOCATES.....APPLICANT/ADVOCATE**

**VERSUS**

**UAP PROVISIONAL INSURANCE COMPANY LIMITED....RESPONDENT/CLIENT**

**JUDGMENT**

By a notice of motion dated 30.10.17, brought under Section 51 of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

- 1. THAT the certificate of costs dated 25.4.17 in respect of taxation order made on 12.4.17 for the sum of Kshs. 78,045/- be adopted as judgment and decree of this Honourable Court**
- 2. Applicant be awarded interest accrued on the costs at 14% p.a from 17.2.17 until payment in full**
- 3. THAT the costs of this application be borne by the client**

The motion is premised on the grounds on the body of the application and the supporting affidavit of Erick Ojuro, Advocate of the High Court of Kenya, sworn on 30.10.17. He avers that the client instructed the advocate to act for it in **Nyando SRMCC No. 120 of 2003 Emma Akinyi Omondi (suing as the personal representative of the estate of Beatrice Atieno Omondi) v Untited Millers Ltd & Others.** That the bill of costs in respect of services rendered was taxed on 12.4.17 for the sum of Kshs. 78,045/- 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 13.12.17, the respondent, though served, did not send a representative. The application is therefore not opposed.

In the case of **Musyoka & Wambua Advocates v 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 **Nyando SRMCC No. 120 of 2003 Emma Akinyi Omondi (suing as the personal representative of the estate of Beatrice Atieno Omondi) v Untited Millers Ltd & Others** 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.

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 17.1.17 and thirty (30) days from the delivery of the bill to the client expired on 17.2.17.

The upshot of this is that the notice of motion dated 30.10.17 succeeds and is allowed in the following terms:

- a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 78,045/-***
- b) Interest shall accrue on the taxed costs at 14% per annum from 17.2.17 until payment in full***
- c) The Advocate will also have the costs of this application.***

**DATED AND DELIVERED ON THIS 14th DAY OF December 2017**

**T.W. CHERERE**

**JUDGE**

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

Court Assistant - Felix and Carol

For the Applicant -N/A

For the Respondent -N/A