



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
MISCELLANEOUS NO. 113 OF 2013

PHILIP MUOKA & CO. ADV.....APPLICANT/ADVOCATE

VERSUS

JAMES MULINGE.....1ST RESPONDENT

JOSEPH KIAWA NTHIWA..... 2ND RESPONDENT

JOSEPH MUTUA KAIND.....3RD RESPONDENT

R U L I N G

INTRODUCTION

1. The **Notice of Motion** application before the court is dated **3rd March 2015** by the Applicant/Advocate under Section 51 (2) of the Advocates Act, Rule 7 of the Advocates Remuneration (Amendment) Order, Section 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil procedure Rules.
2. The application seeks the following orders namely:-
 1. ***That Judgement be entered for the amount of Kshs.480,591/= by the Certificate of Costs dated 27th August 2014 against the Defendants.***
 2. ***That the taxed costs do attract interest at court rates form 27th August 2014 until payment in full.***
 3. ***That a decree be issued in respect of the Certificate of Taxation dated 27th August 2014 and the Applicant be at liberty to execute for recovery of the same in such a manner as a decree of this honourable court.***
 4. ***That the additional costs of Kshs.9,430.00 incurred in taxation and filling of this application be provided for.***
3. The application is premised on the grounds set out therein and is supported by the affidavit of **Philip Muoka** dated **3rd March 2015**.
4. The brief history of the application is that the Advocate/Applicant's Block Bill of Costs was remitted to the client vide a letter dated 27th August 2014 for purposed of settlement as provided for under Rule 7 of the Advocates Remuneration (Amendment) Order. As the Respondent's/Clients failed to settle the Advocate's Costs, the Applicant proceeded to file its Bill of Costs on 24th February 2015 thereby incurring further costs. The Bill of Costs was taxed on

27th August 2014 in the sum of Kshs.480,591,00 by the Deputy Register, however, the Certificate of Taxation has to date neither been varied nor set aside. Rule 7 of the Advocates Remuneration (Amendment) Order provides for interest to be applied on the advocates fees after expiration of one month from the date of delivery of the Bill of Costs to the client. The Applicant seeks interest at court rates from the date of delivery of the Applicant's Bills of Costs being 27th August 2014 and, the additional costs in the sum of Kshs.9,430.00 incurred in taxation. The Applicant seeks to proceed and realize the costs taxed by way of execution and it is necessary for judgment to be entered in its favour of execution.

5. The application is not opposed. The same was served upon the Respondents. To prove that, there is an affidavit of service dated and filed in court on 12th March 2015. This court is entitled to believe that the Respondents have failed to respond to the same because they have no defence to the application to enter judgement.
6. I have also seen on record marked 'JM3' Certificate of Taxation dated 27th August 2014 for Kshs.476,841/=. There is an additional sum of Kshs.9,430.00 claimed as further costs. However there is no evidence that the same was also subjected to taxation. That being so, this court cannot enter judgement for the said Kshs.9,430/=.
 7. In the upshot, Judgement is entered for the Applicant as follows:-
 - a. ***Kshs. 476,841/=.***
 - b. ***Interest thereon at court rates from 27th August 2014 until payment in full.***
 - c. ***Costs of this application shall be for the Applicant***

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 29TH DAY OF MAY, 2015

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Maina holding brief for Kosgei for the Applicant/Advocate

No appearance for the Respondents

Teresia – Court Clerk