



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NUMBER 204 OF 2010

GEORGE NGICHIRI KARORI 1ST
APPELLANT

OLIVER NDUMA 2ND
APPELLANT

VERSUS

ANNE WANGUI WAHOME 1ST
RESPONDENT

JOHN NDEGWA RUTHA 2ND
RESPONDENT

RULING

The Respondents/Applicants have moved the court by way of a Notice of Motion dated 2nd day of November, 2015 seeking the following orders: -

1. That the Judgment be entered for the Respondents/applicants as against the Appellant/Respondent for a sum of Ksh.127,465/- being the certified costs due to the Respondents/Applicants.
2. That the Appellant/Respondent do pay the Respondents/Applicants interest on the certified costs at court rates until payment in full.
3. Costs of the Application be awarded to the Applicants/Respondents.

The Application is brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya and Rule 7 of the Advocates (Remuneration Order). It is premised on the grounds set out on the body of the application and the supporting Affidavit of Angela N. Munga-Mwadumbo Advocate.

The Application came up for hearing on the 2nd day of December, 2015 when M/s Mwadumbo appeared for the Applicants/Respondents but there was no appearance for the Appellant/Respondent thought the firm of Rachier & Amollo Advocates who are on record for the Appellant had been duly served with a hearing notice and an Affidavit of Service filed in court on 2nd December, 2015 to that effect.

The summary of the facts as captured in M/s Mwadumbo's Affidavit in support of the Application and also in her oral submission are that: -

Judgment in the subordinate court matter being Milimani PMCC No. 13726 of 2004 was delivered on the 17th may, 2010. The Appellant being dissatisfied with the same lodged the Appeal herein on the 4th June, 2010.

The Appellant took no steps to prosecute the Appeal for over five (5) years as a result of which the Appeal was dismissed on the 3rd day of July, 2015 by Justice Mabeya in accordance with the provision of order 42 Rule 35 (2) of the Civil Procedure Rules.

Pursuant to the dismissal the Respondent had the costs assessed and demanded the payment of the same from the Appellant vide a letter dated 6th July, 2015 which was not responded to. The Applicants/Respondents filed the Bill of Costs dated 27th July, 2015 which was eventually taxed on 15th September, 2015 and a Certificate of Taxation issued to that effect.

The Appellant/Respondent has not challenged or set aside the ruling on taxation and has failed to pay the taxed amount. The Respondent is therefore, seeking for judgment against the Appellant for the costs aforesaid.

I have considered the Application, the Affidavit in support and the submissions made by the counsel for the Respondents/Applicants. The Application is not opposed as the Appellant failed to file a Replying Affidavit to it. The court record confirms that the Appeal was indeed dismissed on the 3rd day of July, 2015 and costs were awarded to the Respondents/Applicants.

The Respondents filed a Bill of Costs on the 27th day of July, 2015 which was subsequently taxed by the Deputy Registrar and a Certificate of Taxation dated 23rd September, 2015 was issued confirming that Costs were taxed at Ksh.127,465/- as against the Appellant. The ruling by the Registrar has not been challenged or set aside by the Appellant/Respondent.

The Appellant is aware of the taxation as a demand letter dated 8th October, 2015 was sent to Rachier & Amollo Advocates and the same was acknowledged on the 9th day of October, 2015, but the payment has not been made todate.

In view of the foregoing, the Application dated 2nd November, 2015 is allowed as prayed with costs to the Respondents/Applicants.

It is so ordered.

Dated and Delivered at Nairobi this 10th day of December, 2015.

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L. NJUGUNA

In the presence of

..... for the Appellants.

..... For the Respondents.