

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS APPLICATION NO.31 OF 2012

KEN PUNDO & COMPANY ADVOCATES.....APPLICANT

VERSUS

MUNICIPAL COUNCIL OF KISUMURESPONDENT

R U L I N G

The application dated 3/10/13 was brought under section 51(2) of the Advocates Act (Cap.16) and Orders 11(3)(b) and 51 (1) of the Civil Procedure Rules. It sought the consolidation of Kenya High Court Miscellaneous Applications Nos.32/12, 33/12 34/12, .36/12, 37/12,. 38/12, 39/12 and 40/12 with the present cause and thereafter judgment be entered in each in terms of the consent orders and/or the taxed bill of costs as shown in the annexures to the supporting affidavit of Ken Pundo, an advocate in the applicant's firm. It was deponed that the firm of advocates was retained by the respondent to act for it in Kisumu HCCC's Nos.35/03, 360/02, 440/01, 339/02, 17/02, 374/00, 171/02, 209/02 and 77/03. The firm subsequently filed advocate/client bill of costs in each file. In respect of HCCC No.77/03, 209/02, 339/02 and 4401/01 the bills were taxed at Kshs.525,488/70, Kshs.108,554/20, Kshs.2,732,203/80, and Kshs.6,562,164/=, respectively. In respect of HCCC Nos.171/02, 374/00, 17/02 and 260/02 there was recorded a consent for costs at Kshs.1,600,000/=, Kshs.2,600,000/=, Kshs.1,500,000/=, and Kshs.4,300,000/=, respectively. I have called for the files and confirmed these.

The only opposition to the application was by way of notice of preliminary objection dated 14/10/13 which was heard by Justice Chemitei and dismissed with costs on 3/12/13. It follows that retainer was not contested. There was also no challenge to the existence of the taxed bill of costs or the consent as to costs. In respect of each file there is a certificate of costs.

Under section 51(2) of the Advocates Act:

“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.”

(GATHENJI AND COMPANY ADVOCATES .V. WAIHENYA CHOMBA AND OTHERS, NAIROBI (MILIMANI) ELC Misc. Application No.721 of 2000).

The certificates of costs herein have neither been set aside or altered by the court. The amounts therein are due and owing to the applicant as costs.

In conclusion, I allow the application and order the consolidation of Kisumu High Court Miscellaneous Applications Nos.32, 33, 34, 36, 37, 38, 39 and 40 of 2012 into the instant application No.31/12. I then enter judgment in the sum of Kshs.19,928,410/70 being the total of the certificates of costs in the stated applications. Costs will follow the event.

Dated, signed and delivered this 31st March, 2014.

A. O. MUCHELULE

JUDGE