



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 132 OF 2011
IN THE MATTER OF THE ADVOCATES ACT (CAP 16)
AND
IN THE MATTER OF TAXATION OF COSTS
BETWEEN
MUTTISYA & CO. ADVOCATES.....ADVOCATE/APPLICANT
-VERSUS-
LYDIA NJERI KIAI & ANOTHER.....CLIENT/RESPONDENT
JUDGEMENT

1. The application for determination is a Notice of Motion dated 6th March, 2013 and is brought under **Section 51(2)** of the Advocates Act, Cap 16, Laws of Kenya, **Sections 3A** and **63E** of the Civil Procedure Act, Cap 21, Laws of Kenya, and all enabling provisions. In it the Applicant thereby seeks orders - that the Certificate of Taxation dated 6th November, 2012 for an amount of Kshs. 2,443,100.00 be entered as the final judgment for costs in this suit, that interest of 14% to accrue from the date of issue of certificate of taxation till payment in full, and that the costs of this application be provided for.
2. The application is predicated on the grounds specified therein and is further supported by the annexed affidavit of Miriam Mbithe sworn on 6th March, 2013. In that affidavit, the Applicant reiterates the grounds of the application and contends that they filed a bill of costs dated 28th February, 2011 after provision of legal services to the Respondent; that a certificate of taxation dated 6th November, 2012 was issued thereof. Further, that it is the law that for there to be a decree for execution to proceed there has to be a judgment, and that it is only just and fair that the Applicant herein recovers its costs. It is the Applicant's prayer that judgment be entered for the applicant to a tune of Kshs. 2,443,100.00 as per the certificate of taxation. Finally, the applicant avers that it is just and fair that they be granted interest till payment in full of the decretal sum because as the time runs the inflation rate goes high.
3. From the record, I note that the application is not opposed, although the Respondent was duly served. The affidavit of Service sworn on 1st July, 2013 by Francis W. Mwanzia, a duly authorized court process server, states, at paragraph 5,

“That I then tendered copies of the said hearing notice to her to which she accepted

service but refused to sign which I now return to this Honourable Court duly being served.”

4. The court in this instant application has been asked to exercise the powers conferred upon it by the provisions of **Section 51(2)** of the Advocate’s Act and grant the orders sought. The said **Section 51(2)** of the Act provides:-

“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, as in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

5. Considering that the application is not opposed and that the applicant has demonstrated that they are entitled to the orders sought, the application is merited. Further, the issue of retainer is not in dispute. A perusal of the court’s records shows that there is no dispute that the Applicant, Muttisya & Co. Advocates, presented a bill of costs for taxation dated 28th February, 2011 and filed on even date. As a result a certificate of taxation dated 6th November 2012 was issued. The Applicants were therefore duly instructed by the Respondent.
6. There has been absolutely no alteration, setting aside or variation of the said certificate of taxation. It is therefore proper to hold pursuant to the provisions of **Section 51 (2)** of the Advocates Act, that the certificate of taxation is final as to the amount of the costs covered thereby. The applicant has therefore met the statutory requirements of **Section 51 (2)** of the Advocates Act, and is thus entitled to judgment for the sum in the certificate of taxation.
7. The applicant has also sought interest on the taxed costs at a rate of 14% from the date of issue of taxation till payment in full. This is in keeping with the relevant law. According to the provisions of Rule 7 of the Advocates (Remuneration) Order, an advocate may charge interest at 14% per annum. The said Rule provides as follows:

“An advocate may charge interest at 14 per cent 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.”

8. Accordingly, an amount of Kshs.2, 443, 100.00 is hereby entered as final judgment for the applicant. Interest at 14% per annum shall accrue from 6th November, 2012 when the certificate was issued. The applicant is entitled to the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 21ST DAY OF MARCH, 2014.

W. MUSYOKA

JUDGE