



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISC. CIVIL APPLICATION NOS.180,190,187,170 AND 173 OF 2011 (CONSOLIDATED)

IN THE MATTER OF THE ADVOCATES ACT CAP 16

AND

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER

AND

IN THE MATTER OF RECOVERY OF TAXED COSTS AS BETWEEN ADVOCATES AND CLIENTS

BETWEEN

KENNEDY OKONGO

t/a OKONG'O AND COMPANY ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

KENINDIA ASSURANCE COMPANY LIMITED.....CLIENT/RESPONDENT

JUDGMENT

1. Before me is the Advocates'/Applicants' Notice of Motion dated 29th day of August 2013 brought under the provisions of **Section 51 (2)** of the **Advocates Act Cap 16 Laws of Kenya** and paragraph 7 of the Advocates Remuneration Order. The Advocate/Applicant seeks the following orders:-

1. *Spent.*
2. *Judgment be entered for the applicant against the respondent in the sum of Kshs.169,445/= [in] respect of the amount stated in the certificate of costs.*
3. *The court be pleased to order that the certificate of costs dated 15th December 2011 and issued to the applicant in Kisii High Court Miscellaneous Civil Application No.187 of 2011 between the parties hereto be deemed to be decree of this court for the sum taxed and found due to the applicant as against the client/respondent.*
4. *The interest does accrue on the aggregate of costs disclosed in the certificate of costs at the rate of fourteen percent (14%) per annum with effect from 15th December 2011 until payment is made in full as prescribed in paragraph 7 of the Advocates Remuneration Order.*
5. *The costs of this application be granted to the Advocate/Applicant.*

2. The application is premised on the grounds set out on the face thereof and supported by the affidavit of Kennedy Okong'o an advocate of the High Court sworn on the 29th day of August 2013.

3. Briefly, he states that his firm was instructed by the respondent to act for them in Kisii CMCC No.580 of 2003 a suit where they were named as defendants and accordingly successfully represented the respondent. They then sent a fee note to the respondent upon the conclusion of the case which was largely ignored and they subsequently filed a bill of costs on Advocate/Client basis for taxation pursuant to the provisions of **Paragraph 13** of the **Advocates Remuneration Order**.

4. The same was taxed by the taxing officer who certified the amount of costs due and payable by the client to the advocate and a certificate of costs issued in favour of the advocate.

5. He states that he served the respondent with a taxation notice but the respondent never attended court neither did he oppose the bill of costs and taxation thus proceeded and the bill of costs was taxed by the Taxing Master, Deputy Registrar of the High Court and Certificate of Costs issued in that regard in the sum of Kshs.169,445/= as shown in annexure marked "**KO-1**". He further depones that the retainer is not disputed and the said certificate of costs has neither been set aside nor reviewed and the said costs as taxed and determined are due and payable to him but the respondent has refused to pay.

6. That in the circumstances it is absolutely necessary that the application be allowed and the said certificate be converted into judgment and decree of this honourable court and execution do issue forthwith to enable him recover the said costs already taxed. He prays that interest on the taxed costs be with effect from 15th December 2011 the date of taxation until payment in full.

7. The application is not opposed. There is no replying affidavit nor are there grounds of opposition in the court record. The application was served upon the respondent. There is an affidavit of service by George Ochieng Bala sworn on the 7th February 2014, but the respondent ignored it all. The application being unopposed, the same is allowed in terms of prayers (b), (c), (d) and (e) of the Notice of Motion dated 29th August 2013. I also enter judgment as follows in the following files:-

- *Misc.190/2011 – in terms of prayers (b), (c), (d) and (e) of the Notice of Motion dated 29/08/2013.*
- *Misc. 187/2011 – in terms of prayers (b), (c), (d) and (e) of the Notice of Motion dated 29/08/2013.*
- *Misc.170/2011 – in terms of prayers (b), (c), (d) and (e) of the Notice of Motion dated 29/08/2013.*
- *Misc. 173/2011 – in terms of prayers (b), (c), (d) and (e) of the Notice of Motion dated 29/08/2011.*

Dated and delivered at Kisii this 6th day of August, 2014

R.N. SITATI

JUDGE

In the presence of:-

Mr. Momanyi Aunga for Odhiambo Kanyangi for the Applicant

N/A for the Respondent

Mr. Bibu - Court Assistant