



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

Misc. Application No.251, 252 And 253 Of 2009

IN THE MATTER OF OBAGA & COMPANY, THE ADVOCATE

AND

IN THE MATTER OF TAXATION OF ADVOCATE/CLIENT BILL OF COSTS

BETWEEN

ROSE OBAGA T/A OBAGA & COMPANY ADVOCATES THE ADVOCATES

VERSUS

ABDALLAH ISSA TIMAMY

T/A TIMAMY & CO. ADVOCATES THE CLIENT

JUDGMENT

1. Before this court is the applicant's/advocates Notice of Motion dated 2nd September 2013 brought pursuant to **Section 51 (2)** of the **Advocates Act**. The applicant seeks for orders that:-

1. *Judgment be entered for the Applicant/Advocate in accordance with the taxed costs herein together with interest from date of raising Fee Note/Bill on the 14th day of February 2013.*
2. *The applicant be at liberty to execute against the respondent.*
3. *Costs be provided for.*

2. The application is based on the grounds set out on the face thereof and is further supported by the annexed affidavit of Rose Obaga an advocate of the High Court of Kenya practicing as such in the name and style of Obaga & Co. Advocates.

3. Briefly she states that she got instructions from the firm of Timamy & Co. Advocate to act for them on behalf of the respondent herein as the Principal Client in Keroka SRM Civil suit No.154 of 2001 between Patrisi Mose Oreng and Kipkebe Limited.

4. That her firm did conduct the defence, including interlocutory applications, prepared and served pleadings and court documents, attended court and successfully prosecuted on behalf of the said advocates. She states that thereafter the advocate did render her bill for work done on the 14th day of February 2003 being exhibit **"RO1"** but the client failed to pay the same prompting the advocate to file their bill of costs dated 16th December 2009 which was taxed at Kenya shillings One Hundred and Two Thousand Four Hundred and Sixty Four (Kshs.102,464/=) shown as Exhibit **"RO2."**

5. She contends that the same has not been altered or varied and she is claiming interest with effect from date of rendering/raising her fee note that is on the 14th day of February 2003. Lastly that the retainer is not disputed and thus being an undisputed retainer **Sections 48 (2) and 49** of the **Advocates Act** cannot apply.

6. The application is not opposed, nor has any reference been preferred to this court in accordance with **Rule 11 (2) of the Advocates Remuneration Order. Section 51 (2) of the Advocates Act (Cap 16)**, provides that 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.

1. From the record, the certificate of costs was issued on the 14th of October 2013 for Kshs.102,464/=. The Bill of Costs has not been set aside or altered and the retainer has not been disputed.
2. This court therefore orders that judgment be and is hereby entered for the applicant/advocate in accordance with the taxed costs herein together with interest from 16th December 2009. The applicant be at liberty to execute against the respondent.
3. With regard to **Misc. Application No.251 of 2009 – Obaga -vs- Timamy & Co. Advocates** and **Misc. No.252 of 2009 – Obaga -vs- Timamy & Co. Advcoates**, I enter judgment as follows:-
 - *Misc.No.251 of 2009 – Kshs.93898/= plus costs and interest from 16th December 2009.*
 - *Misc.No.252 of 2009 – Kshs.74144/= plus costs and interest from 16th December 2009.*

1. It is so ordered.

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

R.N. SITATI

JUDGE.

Mr. Momanyi Aunga for Obaga for the Advocate

N/A for the Client

Mr. Bibu - Court Assistant