



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. APPLICATION NO.146 OF 2012**

**WILFRED KONOSI ..... APPLICANT**

**VERSUS**

**ALEX OTUKE ONDIMU ..... RESPONDENT**

**RULING**

By a notice of motion dated 5/12/2012, and supported by the affidavit sworn by **WILFRED KONOSI**, the applicant seeks for orders that judgment be entered in favour of the applicant against the respondent in the sum of Kshs.725,508.50 being the sum certified to be due. He also prays for costs of this application to be borne by respondent.

The application is premised on grounds that:-

- a. The Bill of costs was served on the respondent and the same was taxed on 30/05/2012.
- b. The bill was taxed at Kshs.725,508/50 and a certificate was issued to confirm the same.

In the supporting affidavit sworn by WILFRED NYAUNDI KONOSI (advocate), he deposes that he had acted for the respondent in **Nakuru HCCC No.249 of 2010** upto a point where he withdrew from conduct of the suit and the firm of B.O. Akango Advocate filed a notice of change of advocates. He then drew up a bill of costs which was taxed in the sum now claimed. The issue of retainer was not disputed and on 15/07/2011, the applicant sent a letter to the respondent authorising the fees due as shown in exhibit WNK2.

The prayer is that judgment be entered in the sum sought with interest at the rate of 14% from 16/08/2011.

There has been no response to this application. The bill was taxed on 25/06/2012, and there has been no reference filed contesting the taxation – in fact I had expected that since the matter had not been concluded and another advocate had taken over, the respondent would have raised issues regarding the taxing of the bill under **Rule 62A(1)** of the **Advocates Remuneration Order**.

Anyway it seems the respondent decided not to pursue that angle and certainly it is not for this court to prosecute and begin to argue the matter on behalf of a party who has not even filed a reference. All that, I see on record is a notice of objection filed by the firm of Gordon Ogola & Associates on behalf of the respondent asking the taxing officer to give reasons for the taxation on certain items, but it seems nothing was pursued beyond that.

Consequently under the provisions of **Section 51(2)** of the **Advocates Act** the certificate of taxing issued here confirms the final amount as costs due to the applicant, since the same has not been altered or set aside and in any event, the retainer has not been disputed. Consequently judgment is entered for the sum certified to be due in the figure of Kshs.725,508/50 cents.

As regards interest, it is not clear to me why the same should run from 2011, I think it fell due once the court made the pronouncement on the taxation i.e. on 25/06/2012 and the rate shall be at rates provided

under the Advocates Remuneration Order which is 14% per month until payment in full.

**Delivered and dated this 26th day of April, 2013 at Nakuru.**

**H.A. OMONDI**

**JUDGE**