



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Miscellaneous Application 157 of 2012**

**WILFRED N. KONOSI & CO. ADV..... APPLICANT**

**VERSUS**

**MOTOR WORLD LIMITED ..... RESPONDENT**

**RULING**

The Notice of Motion dated 7<sup>th</sup> August 2012 is made pursuant to provisions of **Section 51(2)** of the **Advocates Act** and seeks that judgment be entered in favour of the applicant against the Respondent, in the sum of Kshs.142,244/50 cents, being the sum certified to be due:-

- (1) The Bill of Costs was served on the Respondent and came up for taxation on 25<sup>th</sup> June 2012.
- (2) That Bill of costs was taxed in the sum of Kshs.142,255.50 and a certificate of costs was issued certifying the sum due.
- (3) The issue of retainer is not disputed.

The matter proceeded ex parte as the respondent's counsel did not attend court nor had the respondent filed any response to the application.

In an affidavit sworn by the applicant he deposes that he acted for the respondent in Nakuru **RMCC No.130 of 2011** up to a point where he withdrew from conduct of the matter. The bill having been taxed and certificate issued, he contends that the sum is justly due to him and judgment ought to be entered in the amount sought.

Section 51(2) of the Advocates 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 costs covered thereby, and the court shall 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.”**

The one document which would satisfactorily demonstrate that applicant was instructed by the respondent is the letter of instruction by respondent. Such letter is not annexed. However, as noted in the case of **Wainaina Ileri & Co. Advocates V Kenya Bus Services Ltd.**, Misc. Application No.222 of 2005, the availability of a letter of instructions is not the sole factor that would guide the court. The applicant had deposed that his firm had been instructed to act for respondent, and this has not been disputed. The **Ileri**

**case** held that, it is not mandatory for the advocate to exhibit the letter of instruction – I hold similar views. Consequently, I make a finding that there is no dispute as to the retainer.

I confirm that the certificate of costs dated 1<sup>st</sup> August 2012 certifies the sum allowed in favour of the applicant as Kshs.142,224/50. The record by the taxing officer dated 2/7/2012 also shows that the bill was taxed at Kshs.142,224/50 cents. The certificate has not been set aside, reviewed or varied and is therefore deemed to be final. I am satisfied that the applicant meets what is contemplated by the provisions of Section 51(2) of the Advocates Act and is therefore entitled to judgment. The application is granted as prayer 1 and 2. Costs to the applicant.

**Written at Nakuru by H.A. Omondi, Judge**

**H.A. OMONDI  
JUDGE**

**Delivered and dated this 21<sup>st</sup> day of December, 2012 at Nakuru.**

**R.P.V. WENDOH  
JUDGE**