



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & TAX DIVISION
MISC CAUSE NO. 194 OF 2010

EVANS THIGA
GATURU.....APPLICANT

VERSUS

APEX SECURITY
LTD.....RESPONDENT

R U L I N G

By an application by Notice of Motion dated 23rd December, 2010, the Applicant/Advocate applies for orders that judgment be entered in his favour against the Respondent for the sum of Kshs 235,807/- together with interest at 14% per annum from 11th April, 2010, until payment in full. He also prays for orders that the Respondent do pay the costs of this application and costs of the Cause.

The application is brought under Section 51(2) of the Advocates Act; Paragraph 7 of the Advocates (Remuneration) Rules; Section 3 of the Civil Procedure Act; Order L Rule 1 of the Civil Procedure Act; and all other enabling provisions of the law. It is supported by the annexed Affidavit of EVANS THIGA GATURU, Advocate, and is based on the grounds that –

1. **The Taxing Officer has issued a Certificate of Taxation herein in favour of the Applicant against the Respondent for the sum of Kshs 235,807/- in respect of Legal services rendered plus court fees of Kshs 12,085/-.**
2. **The Advocate sent his bills to the client on 11th March 2010 and is therefore entitled to charge interest at 14% per annum as per the Advocates (Remuneration) Order from 11th April, 2010, one month from the date the Applicant/Advocate tendered his bill to the client/Respondent until payment in full.**
3. **The Client/Respondent has been notified and supplied with the Certificate of Taxation for Kshs 235,807/- and receipts for further court fees incurred so far ever since 11.3.10 for Kshs 12,085/- altogether Kshs 247,172/-.**
4. **The Client/Respondent has not complied with the Advocate's/Applicant's demands for payment.**
5. **There were no outstanding issues left for determination herein, and it is therefore fair, just and equitable that this Application be granted in the interest of justice.**

When the application came for hearing on 24th January, 2011, Mr Makumi appeared for the Applicant but the Respondent neither appeared in person nor was it represented. An affidavit of Service on record shows that the Respondent's Advocates, M/s Were & Oonge, were served on 10th January, 2011. The court was satisfied that they were served in sufficient time to enable them to attend court but they did not do so, and thereupon proceeded *ex parte*. Furthermore, the Respondent filed neither a replying affidavit nor grounds of opposition. In the circumstances, the application was unopposed.

The Applicant attached to the application a certificate of taxation dated 27th September, 2010, which shows that his bill of costs was taxed at Kshs 235,087/-, and not Kshs 235,807/- as indicated in the Application. To that figure he added the sum of Kshs 12,085/- in respect of legal services rendered plus court fees, which should translate to a total of Kshs 247,172/-. The certificate of taxation in this matter has not been set aside or altered by the court, nor is the retainer disputed. In the event, the Applicant is entitled to judgment for the sum certified due together with costs.

I accordingly make the following orders –

- (i) **Judgment be and is hereby entered for the Applicant against the Respondent for the sum of Kshs 247,172/- together with interest at 14% per annum from 11th April, 2010, until payment in full.**
- (ii) **The Respondent will also bear the costs of this application.**

Orders accordingly.

DATED and **DELIVERED** at Nairobi this 4th day of February, 2011

L NJAGI

JUDGE