



**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 164 OF 2007**

**MUTHOGA GATURU & CO. ADVOCATES ..... PLAINTIFF**

**VERSUS**

**MARGARET WAITHERERO..... DEFENDANT**

Coram: Mwera J  
Bwire for Okeyo for plaintiff  
S. Ng'ang'a for defendant  
Njoroge court clerk

**RULING**

The motion about to be determined was dated 17.12.10 and brought under Section 5 1 (2) of the Advocates Act, paragraph 7 of the Advocates (Remuneration) Order and Order L. rule 1 of the Civil Procedure Rules. Therein it was prayed:

i) That judgement be entered for sh. 78, 435/= plus interest from 1.7.08 until payment in full.

In the grounds it was contended that the sum stated above arose from the taxation of the advocate/client bill of costs on 1.7.08. The respondent had not paid that sum, and as such the applicant could only execute for its costs if the prayer laid is granted. The respondent had not filed any reference against the taxation.

The supporting affidavit sworn by James Okeyo, Advocate exhibited a certificate of taxation for the sum of sh. 78,435/= and urged the court to adopt it as its judgement to facilitate execution.

The respondent's grounds of opposition stated that the order sought was directed to her personally yet the taxation was against the estate of one Herman Gachuki Ngatiri. The respondent was only joined in the matter as the executrix of the deceased's will. There was no replying affidavit in the file and both sides submitted.

The applicant's position was that the respondent was the executrix and personal representative of the late Herman Gachuhi. He was issued with a confirmed grant. The applicant did represent the deceased Herman in **HCCC 1731/85** in which judgement for sh. 550,000/= plus interest and *mesne profits* was obtained. An advocate/client taxation followed and the claimed sum was awarded. It was not paid and so this application was filed. All the time the respondent participated in the proceedings including taxation. An interest at 14% per annum claimed was equally warranted under the Remuneration Order. Several cases were cited to support the position that a sum borne by a certificate of costs can be made a judgement of the court for execution at the interest rate claimed. This motion was never intended to recover the costs from the respondent personally but from the estate of the deceased, Herman Gachuhi through her. She got a confirmed grant in respect of that estate whereupon the deceased's property vested

in her. She is responsible for paying out of the estate all the deceased's debts such as this one. The omission to describe the respondent as the executrix of the estate of Herman Gachuhi was an error that need not stand in the way here to do justice to the parties and thereby achieve the intended and overriding object in litigation.

On her part the respondent maintained that she was only an executrix of the estate of the said Herman Gachuhi and not a client of the advocate/applicant.

Having considered all the foregoing judgement is entered in favour of the applicant in the terms set out in the motion. The costs are against the estate of the deceased Herman Gachuhi and the respondent as his personal representative is obliged, now that the costs have been ascertained, to pay the same out of the estate of the deceased. She is not sued here in her personal capacity but in the capacity of the personal representative of the deceased Herman. When she got a confirmed grant in respect of that estate, all the property of the deceased vested in her – hence the orders herein.

Costs to the applicant.

Delivered on 8/3/11.

**J. W. MWERA**  
**JUDGE**