



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC. CIVIL APPLICATION NO.547 OF 2010
IN THE MATTER OF THE ADVOCATES ACT (CHAPTER 16 OF LAWS OF KENYA)

AND

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE/CLIENT

BETWEEN

C.M. MITEMA & COMPANY ADVOCATES.....APPLICANT

AND

CITY COUNCIL OF NAIROBI.....RESPONDENT

RULING

Before me is an application dated 13th April 2011 filed by the applicant C.M. Mitema & Company advocates. The respondents are the City Council of Nairobi.

The application was filed under Order 51 Rule 1 of the Civil Procedure Rules, and section 51(2) of the Advocates Act (Cap.16) as well as Rule 7 of the Advocates Remuneration Order, section 263 A (a) of the Local Government Act (Cap. 265 Laws of Kenya), and section 3 and 3A of the Civil Procedure (Cap. 21).

The application seeks orders against the City Council of Nairobi. It arises from an advocate/client bill of costs which was taxed by consent on 26th January 2011.

The application was served on 26th May 2011 but no response was filed, nor did anybody appear for the respondent on the hearing date which was 23/6/2011. The application therefore stands unopposed.

The specific prayers in the application are 4. They are as follows ?

1. Judgment be entered for the applicant as against the respondent for the sum of Kenya shillings

Four Hundred and Seven Thousand Five Hundred Ninety Two (Kshs.407,592/=).

- 2. The respondent do pay the applicant the said sum plus interest at 14% per annum from the 25th March 2002 till payment in full.**
- 3. An order do issue directing the Town Clerk of the City Council of Nairobi to pay the decretal amount out of the revenue of the respondent Council within seven (7) days of service of this order.**
- 4. Costs of this application be borne by the respondent.**

Though the application is not opposed, only prayers 1 and 4 can be granted in the form in which they are. Prayer 2 asks for interest from 25th March 2002, when the costs had not been taxed. The interest, in my view, can only run from the date of taxation. Prayer 3 pre-empts execution, which is a different stage from entry of judgment. This prayer is not currently grantable. It is premature

Consequently, I allow the application. I grant prayer 1, and 4. Prayer 2 is granted from the date of taxation, which is 26th January 2011. Prayer 3 is declined, as it is premature.

It is so ordered.

Dated and delivered at Nairobi this 14th day of July 2011.

.....

GEORGE DULU

JUDGE

In the presence of

No appearance for Applicant
No appearance for Respondent
C Muendo – court clerk