



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL SUIT NO. 759 OF 2009

IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 OF THE LAWS OF KENYA

AND

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT

BETWEEN

MUCIIMI MBAKA & CO., ADVOCATESADVOCATE

AND

CITY COUNCIL OF NAIROBI.....CLIENT

R U L I N G

The Advocate herein filed some twenty-one (21) advocate and client bills of costs for taxation against the Client vide the present miscellaneous application and **Nairobi HC Misc Applications Nos. 758, 760, 777, 779, 799, 804, 805, 806, 807, 809, 819, 820, 821, 822, 823, 824, 825, 826, 803, and 827, all of 2009**. All the bills of costs were individually taxed sometime last year at various sums of money and separate certificates of taxation issued.

The Advocate has now applied for three main orders as follows –

- 1) Consolidation of these 21 matters upon grounds of convenience and expedition.
- 2) Judgment for one global sum of KShs 3,113,879/66 under section 5 (1) (2) of the **Advocates Act, Cap 16**.
- 3) Interest at 14% on the judgment sum from 11th February 2010, that date being the expiry of 30 days from the date of service of the bills of costs.

Though not stated, the application for consolidation is brought under the new **Order 11, rule 3(1)(h)** of the **Civil Procedure Rules (the Rules)**

The Client was duly served with the application on 20th June 2011. No grounds of opposition or replying affidavit have been filed in response to the application.

I have considered the submissions of the learned counsel for the Advocate.

The new **Order 11, rule 3(1)(h)** merely provides consolidation of suits as one of the things that the court may consider with a view to furthering expeditious disposal of cases and case management at Case Conference. The old **Order XI** provided for consolidation of suits where two or more suits were pending in the same court in which the same or similar questions of law or fact were involved.

In the present case, some 21 suits are pending in this court between the same parties in which the same or similar questions of law and fact are pending, those questions of law or fact being whether or not judgment upon the various certificates of taxation ought to be entered for the Advocate under section 51(2) of the Advocates Act aforesaid.

I consider that the necessity of expeditious disposal of these 21 matters and the saving of costs demand that they be consolidated. Obtaining separate judgments and separate execution proceedings issuing thereafter would involve the parties in greater expense in terms of time and money than is necessary at all. In any case, no prejudice at all will be occasioned to the Client by the consolidation sought.

In the circumstances, I allow prayer 1 of the application. All 21 matters as earlier set out are hereby consolidated to proceed as one in this file i.e. **Misc. Application No. 759 of 2009**.

Regarding the application for judgment, I am satisfied that there is no dispute as to retainer. I am also satisfied that the 21 certificates of taxation have not been set aside or varied. I will therefore enter judgment for the Advocate against the Client for the consolidated sum of KShs 3,113,886/66 (after a slight adjustment on account of a slightly wrong figure assigned to Misc. Application No. 825 of 2009).

The other issue raised is interest. The Advocate wishes to be allowed to charge 14% per annum instead of the rate provided for by law, which is 9% per annum. The court has no jurisdiction to go against the law. Interest will therefore be allowed at 9% per annum on the judgment sum from 11th February 2010 until payment in full.

The Advocate will also have costs of this application. Those will be the orders of this court.

DATED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2011.

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER 2011.