



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**OF KISII**  
**Miscellaneous Civil Case 4 of 2008**  
**OBAGA & COMPANY ADVOCATES.....THE ADVOCATES/APPLICANT**  
  
**VERSUS**  
  
**KIPKEBE LIMITED.....THE CLIENT/RESPONDENT**  
  
**RULING**

The Advocate filed an application dated 20<sup>th</sup> April, 2009 brought under the provisions of **section 51 (2)** of the **Advocates Act**.

The application seeks two substantive orders:

**“(a) That judgment be entered for the Applicant/Advocate  
in accordance with the taxed costs herein.**

**(b) That the applicant be at liberty to execute against the  
Respondent.”**

The application arises from **HCCA NO. 19 OF 2003 KIPKEBE LTD. –VS- JANE MOREKA ONGERI**, at Kisii, in which the Advocate was instructed by the client to lodge the appeal. The said instructions were given on 19<sup>th</sup> February, 2003. In the subordinate court matter that gave rise to the appeal, **CMCC NO. 263 OF 2002** at Kisii, **JANE MOREKA ONGERI –VS- KIPKEBE LTD.**, the advocate had been instructed by M/s Timamy & Company Advocates to hold brief for them. That was with the client’s approval.

On 20<sup>th</sup> July, 2005 Timamy & Company had written to Obaga & Company informing them that they had seized acting for **KIPKEBE LTD.** as at 30<sup>th</sup> June, 2005. Timamy & Company requested the advocate to send to them fee notes for work done upto 30<sup>th</sup> June, 2005 in respect of some 27 matters which included **CMCC NO. 263 OF 2002** aforesaid but not the said appeal. Obaga & Co. forwarded its fee note and proceeded to file a notice of Change of Advocates in the said matter on 26<sup>th</sup> October, 2005.

The advocate prosecuted the appeal successfully and thereafter rendered a fee note to the client. The client in turn instructed the firm of Oguttu Mboya & Co. Advocates to negotiate the said fee note. Parties could not agree on the amount of fees payable and Obaga & Company filed their bill of costs for taxation. The bill was listed for taxation on 30<sup>th</sup> June, 2008 and the taxation was done ex-parte due to non-attendance of the client and/or her representative. The bill was taxed at Kshs. 111,226/= and a certificate of taxation issued on 3<sup>rd</sup> July, 2008.

**Section 51 (2)** of the **Advocates Act** provides as follows:

**“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 the costs thereby, and  
the court may 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.”**

In this matter, there can be no valid dispute that the advocate was retained by the client to institute **HCCA NO. 19 OF 2003**. The appeal was successfully mounted. If there were any items in the bill of costs that the client was not happy with, it ought to have challenged the same when the bill came up for taxation but the client failed to attend court, though duly served with a notice of taxation. The certificate of costs has not been set aside or altered. In the circumstances, I enter judgment for the Advocate in accordance with the taxed costs. The Advocate shall be at liberty to institute execution proceedings against the client. The client shall also bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT KISII THIS 16<sup>TH</sup> DAY OF APRIL, 2010.**

**D. MUSINGA**

**JUDGE.**