



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Miscellaneous Civil Case 61 of 2009**

NYACHOTI & CO. ADVOCATES.....PLAINTIFF

VERSUS

JAYAYANTILAL JIWABHAI PATEL..... DEFENDANT

**RULING**

The application is dated 2<sup>nd</sup> September, 2009 by Notice of Motion and it is under **Section 48 and 51(2) Advocates Act and Cap 16** Laws of Kenya. **Rule 7 of the Advocates Remuneration Order, Order 50 rule 1 of the Civil Procedure Rules, Section of the Civil Procedure Act.** Seeking judgment be entered for the applicant against the respondent in the sum of Kshs.609, 277.52 being the certified cost due to the applicant against the respondent. As taxed by the Deputy Registrar on 16<sup>th</sup> July, 2009. And that the Respondent do pay the applicant interest on certified cost at the rate of 14% per annum from 16<sup>th</sup> July, 2009 until payment in full.

The application is based on the following grounds:-

- (i) That on 4<sup>th</sup> February, 2009 the applicant lodged his advocates/client bill dated 4<sup>th</sup> February, 2009 seeking for its taxation of costs against the respondent for legal services rendered and unpaid for.
- (ii) The said bill was unopposed by the respondent and was taxed on 16<sup>th</sup> July 2009 and allowed in the above said Kshs.609,277.52.
- (iii) That respondent has not filed any reference to challenge the said bill. Therefore certificate of taxation has not been set aside, reviewed or varied.
- (iv) That there is no dispute that the applicant was retained as an advocate in Milimani HCC No.90 of 2004 by JAYAYANTILAL JIWABHAI PATEL versus M. J. Vakaria Electric Ltd. on or about November, 2006 up-to 21<sup>st</sup> January, 2009 when the firm of Ameyo Guto & Co advocates filed a notice of change of advocates.

The application is supported by the affidavit of Philip Nyachoti an advocate of this Honourable court practicing in the name of Nyachoti & Co. Advocates which supports the grounds of the application. Exhibit PN1 is a true copy of notice of change of advocates. On 7<sup>th</sup> November, 2006, JAYAYANTILAL JIWABHAI PATEL appointed the applicant (Nyachoti & Co. Advocates to act for him. And that the bill of costs was unopposed by the respondent and was thereafter taxed. The Respondent has filed a replying affidavit in which he states that the application is misconceived, prejudicial and otherwise against the principle of natural justice. He denied the plaintiff's claim and states that he had retained the services of Salim Danji of the firm of Rahman Danji Elms who was a senior advocate and a good friend. It is sworn that Mr. Danji left the country for Australia and ***"I was informed that Mr. Nyachoti was an employee of that firm and would take care of the case on behalf of the Salim Danji who was my lawyer. After departure of Salim Danji Mr. Nyachoti established his own practice but he did not inform me and I assumed that he was still conducting my case on behalf of Raffman Danji Elms Advocates."***

That the respondent was later informed that the Bill of Costs was taxed and he was informed that the party aggrieved by the decision of the taxing master one could object by writing a letter to Deputy Registrar. "I did write a letter to the Deputy Registrar raising objection and also seeking reasons for taxation". The letter is dated 24<sup>th</sup> July, 2009 and marked JJP. The Respondent says that he waited for reply from the Deputy Registrar and it has not been given to him up-to-date. He also learnt that the applicant had extracted a certificate of costs after they had served the advocate with the application dated 2<sup>nd</sup> of September, 2009.

The applicant has filed several authorities numbering eight. I have examined the same and I am satisfied that the Respondent has no reasonable objection. He has not taken any steps to set aside the certificate of taxation which stands

valid.

I find no defence can be raised in this claim and I allow the application and enter judgment for the Plaintiff/Applicant to the sum of Kshs.609,277.50 plus costs of this application to the applicant.

Orders accordingly.

**Dated, Signed and delivered** at Nairobi this 6<sup>th</sup> day of November, 2009.

**JOYCE N. KHAMINWA**

**JUDGE**