



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 160 of 2004

**ENONDA, MAKOLOO MAKORI & CO.
ADVOCATES.....APPLICANT/ADVOCATE**

VERSUS

**EDNA S.OUMA.....
....RESPONDENT/CLIENT**

RULING OF THE COURT

1. The application coming up for hearing is a Notice of Motion dated 20th November 2007 brought under section 51(2) of the Advocates Act and Order 50 Rule 1 of the Civil Procedure Act (sic). The application seeks the following orders:-

- (i) THAT judgment be entered for the applicant against the respondent for the sum of Kenya Shillings Three Hundred Thousand One Hundred and Eleven (KShs.300,111/=) being the amount certified to be due by the Deputy Registrar of this Honourable Court on 17th March 2006.**
- (ii) THAT the applicant be awarded interest at 12 per cent per annum from 17th October 2005.**
- (iii) THAT costs of this application be awarded to the applicant.**

2. The application is premised on four brief grounds on the face thereof:-

- (a) THAT the bill of costs herein was on 17th March 2007 taxed by consent before the Deputy Registrar in the sum of Kenya Shillings Three Hundred Thousand One Hundred and Eleven (KShs.300,111/=) in favour of the applicant.**
- (b) THAT the certificate of taxation is dated 17th March 2007.**
- (c) THAT neither the said taxation nor the certificate of taxation has been altered varied or set aside.**
- (d) THAT this honourable court has jurisdiction to make the orders sought.**

3. The application is also supported by the sworn affidavit of ENONDA A. M. DICKSON dated 20th November 2007. From the said affidavit the following facts emerge:-

(a) That the applicants were duly instructed by the respondent to act for her in a Tenancy Contract Matter.

(b) That the respondent withdrew her instructions from the applicant on 1st November 2005.

(c) That on 11th January 2006, the applicants lodged an Advocate/Client Bill of costs for taxation and that the said Bill of Costs was taxed by consent of the parties on 17th March 2006 in favour of the applicants against the respondent in the sum of KShs.300,111/= as per annexure marked "EAMD1" being Certificate of Taxation.

(d) That the respondent has failed to pay the said sum of KShs.300,111/= despite demand letters sent to her by the applicants on 22nd June 2006, 5th July 2006 and 2nd August 2007 respectively. (see annexure marked "EAMD2").

(e) That no appeal or application to alter, vary or set aside the said taxation has been made by the respondent or any of the parties herein.

4. The applicant asks the court to exercise the powers conferred upon it by the provisions of section 51(2) of the Advocate's Act and grant the orders sought. The relevant subsection provides as follows:-

"52(2) 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 covered thereby, and the court may make such order in relation thereto as it thinks fit, including, as in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."

5. The application is opposed, but only feebly so. The grounds in opposition thereto were filed on 12th February 2008. The filing of the said grounds on the eve of the hearing of the application was in contravention of the provisions of Order 50 Rule 16(1) of the Civil Procedure Rules. Neither the respondent nor her counsel were present at the hearing of the application though counsel was duly served with the hearing notice on the 30th January 2008. The grounds of opposition as filed are hereby struck out for non-compliance with Order 50 Rule 16(1) of the Civil Procedure Rules.

6. In essence therefore the application remains uncontested. In my view, the applicants have demonstrated that they are entitled to the orders sought and accordingly, I allow the application and make the following orders;-

(a) THAT judgment be and is hereby entered for the applicants against the respondent for the sum of Kenya Shillings Three Hundred Thousand One Hundred and Eleven (KShs.300,111/=) being the amount certified to be due by the Deputy Registrar of this Honourable Court on 17th March 2006.

(b) THAT the applicants be and are hereby awarded interest at 12 per cent per annum from 17th October 2005.

(c) THAT the costs of this application be and are hereby awarded to the applicants.

7. It is so ordered.

Dated and delivered at Nairobi this 21st day of February 2008.

R. N. Sitati

Judge