

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Application 882 of 2007

PETER O. NGOGE.....APPLICANT

VERSUS

NEW-AL-NOOR EXHIBITIONS LTD.....DEFENDANT

RULING

1. The application before me is the Notice of Motion dated 11/03/2008 brought by an advocate under the provisions of section 51(2) of the Advocates Act, Cap 16 Laws of Kenya. The applicant prays that judgment be entered against the respondent herein in the sum of Kshs.265000/= being advocate-client costs taxed on 18/02/2008. He also prays for interest on the said amount pursuant to Rule 7 of the Advocates' Remuneration Order. The grounds in support of the application are that there is no dispute as to the retainer that led to the bill of costs that was taxed on 18/02/2008 and that since the taxation the respondent herein has not filed a reference by way of appeal against the said taxation nor has he obtained a stay of execution of the taxed amount. The application is also supported by the sworn affidavit Peter O. Ngoge dated 11/03/2008 and in which he reiterates the grounds appearing on the face of the application.

2. Though served the respondent has not filed either a Replying Affidavit or Grounds of Opposition. The respondent also did not appear at the hearing of the application though it had been duly served through its advocates on record, M/s F.N. Wamalwa & Co. Advocates. For failure to file any Replying pleadings and to appear at the hearing. Mr. Ngoge who appeared in person urged the court to grant the orders sought since the application was uncontested. Mr. Ngoge relied on the persuasive authority, of Hon. Mr. H.P. Waweru in Misc. Application No.444 of 2004 – Kalonzo Musyoka & Paul M. Wambua practicing as Musyoka & Wambua Advocates –vs- Rustam Hira (practicing as Rustam Hira, Advocate). In that matter it was contended that for judgment to be entered on taxed costs there must be a suit for recovery of an advocate's costs as provided under section 48 of the Advocates Act even if there is no dispute as to retainer and the certificate of costs has not been set aside or altered. It was argued further in that matter that a Certificate of Costs is conclusive evidence only of the costs as taxed but that the procedure for recovery of those costs is different, hence the necessity to file a suit. These issues have not arisen in the instant application, but they are of interest for future reference and for the purpose of shedding some light on the direction the court must take in making a decision on the instant application.

3. Section 51(2) of the Advocates Act provides that the Certificate of Taxation shall, unless it is set aside or altered by the court be final as to the amount of the costs covered thereby. The court is also empowered under the same provisions to make an order that judgment be entered for the same certificate to be due with costs where there is no dispute as to retainer.

4. Section 48 of the Advocates Act provides (i) that no suit for recovery of an advocates costs shall be brought before expiry of 30 days from date of delivery of the bill to the client, (ii) that a suit for recovery of such costs may be brought in any competent court and, (iii) that notwithstanding any other provisions of the Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.

5. In the instant case, Mr. Ngoge says that the bill of costs was taxed way back on 18/02/2008 after due notice to the respondent. He also says that this application was duly served on the respondent's counsel on 12/03/2008 for hearing on 10/04/2008 and that the respondent did not respond to the applicant's claims.

6. I have considered all the relevant provisions of the Advocates Act and also the ratio decidendi of the authority cited to me and my finding is that there is nothing in those provisions that would bar this court from making the order sought by the applicant. In the instant case, there is no dispute as to the retainer of M/s O.P. Ngoge & Associates as counsel for the respondent in Nairobi Misc. Civil Suit No.814 of 2003. It is also not disputed that the Certificate of Taxation has not been altered by the court or set aside. I therefore believe that I am within the law to find and hold that this court has the discretion to enter judgment upon the Certificate of Taxation which has neither been altered nor set aside. Further, there is no contention here that the advocate did not have the retainer to act for the respondent in the matter out of which the taxed costs arose.

7. In the result, I allow the applicant's application and enter judgment for Peter O. Ngoge & Associates T/A O.P. Ngoge & Associates in the sum of Kshs.265000/= together with interest at the rate of 9% per annum from 18/02/2008 until payment in full. Costs of this application shall also go to the advocate/applicant.

Orders accordingly.

Dated and delivered at Nairobi this 16th day of May 2008.

R.N. SITATI

JUDGE

24/04/08