



**REPUBLIC OF KENYA**

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

**Misc. Civil Application 1259 of 2007**

**NJONGORO & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**DUBAI BANK KENYA LIMITED.....RESPONDENT**

**RULING**

In the notice of Motion dated 6<sup>th</sup> May, 2008 under Section 51(2) of the Advocates Act **M/S Njongoro & Co.** Advocates seek that judgement be entered for the applicant against the respondent in the sum of Kshs.841,468.80 being the sum of money taxed and certified by the taxing officer as due and payable to the applicant together with interest thereon at 14% from 16<sup>th</sup> November, 2007 until payment in full.

By a letter dated 17<sup>th</sup> July, 2006 respondent instructed the applicant in HCCC No.348 of 2006 in which the respondent had been sued for recovery of Kshs.22 million. The applicant accepted the respondent's instructions and filed all the necessary pleadings by acting in accordance with the said instructions. By another letter dated 14<sup>th</sup> March, 2007 the respondent withdrew the said instructions. Upon withdrawal of the said instructions, the applicant submitted fee note to the respondent for settlement but it is alleged the respondent failed or neglected to settle the same upon which the applicant filed advocate/client bill of costs on 2<sup>nd</sup> August, 2007. The respondent appointed the firm of **Kiplagat & Associates** to represent them at the taxation which took place on 22<sup>nd</sup> November, 2007. In a ruling delivered on 7<sup>th</sup> February, 2008 the taxing officer taxed and allowed costs payable to the applicant in the sum of Kshs. 841,468.80. The applicant thereafter obtained a certificate of taxation dated 14<sup>th</sup> April, 2008 which was served upon the respondent's advocate and to date no payment has been made to the applicant.

The respondent filed a replying affidavit sworn by **Mr. Rajab Karume** who is the respondent's credit manager who says that the orders sought in this application cannot issue since the respondent has taken substantial steps towards filing of a reference seeking a review of the taxing officer's ruling. He also says that he has been advised that the Notice of Motion herein is incompetent, misconceived and incurably defective in that applicant has failed to comply with the provisions of section 48(1) and 9 of the Advocates Act to wit filing of a suit. He also states that by allowing this application before the main reference is heard and determined, then the respondent will suffer before its case is heard and determined.

The application was argued before me by **Mr. Njongoro** for the applicant and **Mr. Langi** for the respondent and in my assessment their submissions are based on the affidavits filed by the parties herein. I have carefully considered the rival submissions and the issue that stands out in this dispute is whether the applicant has established a case to allow this court to enter judgement in favour of the applicant. No doubt the present application is brought under section 51(2) of the Advocates Act and in my humble view the purpose of that section is that in clear cases where there is no dispute as to retainer and the bill of costs of the Advocates has been taxed, then the court has the powers to enter judgement in favour of the Advocate. I therefore think that the applicant is entitled to the orders sought since there is no dispute as to retainer and secondly the pending application for reference by the respondent cannot be a basis to stop this court in proceeding to enter judgement in favour of the applicant.

In my humble view the objection by respondent under Rule 11 of the Advocates Remuneration does constitute a stay. Even if the respondent succeeds in that application, the Advocate will be required to

refund the money within the shortest time possible. In any case it is not the case of the respondent to stay these proceedings pending the determination of their application filed on 20<sup>th</sup> February, 2008. There is no reason to enable this court as to why the said application by respondent was not prosecuted. It means the respondent is inclined to delay the fruits of taxation as sought by the present applicant in this application. **It is therefore my decision that the applicant is entitled to the orders sought which is hereby granted. The only issue is that interest shall be at the rate of 9% from 16<sup>th</sup> November, 2007 till payment in full. No orders as to costs.**

Dated, signed and delivered at Nairobi this 11<sup>th</sup> day of June, 2008.

**M. A. WARSAME**

**JUDGE**