



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIV. APPLI. 753 OF 2006

B. MBAI & ASSOCIATES ADVOCATES

(on behalf of **MBAI & KIBUTHU ADVOCATES.....APPLICANT**

VERSUS

MBOI-I-KAMITI FARMERS CO. LTD.....RESPONDENT

R U L I N G

1. By the application dated August 16, 2007, the advocate-applicant prays for orders:?

(i) THAT judgment be entered for the applicant-Advocate as against the Respondent for the sum of Kshs.65,877/40 being the taxed costs hereof

(ii) THAT the Respondent do pay to the Applicant-Advocates the said sum of money plus interest, at 9% p.a from 2nd day of September 2006 till payment thereof in full.

(iii) THAT the costs of this Application be to the Applicant in any event.

2. The Applicant says he is entitled to judgment on grounds that (a) the advocate-client costs due to the Applicant have been taxed at Kshs.65,877/40 and a Certificate of Taxation thereof issued by this Honourable Court (b) there is no dispute as to the taxed costs nor has the Respondent raised any objections to date and (c) the Respondent has failed, ignored and/or declined to honour the Certificate of Costs issued and that it is only fair and just in the circumstances that judgment be entered in the sum certified to be due to the applicant-advocate herein.

3. The application is supported by the sworn affidavit of **Kairu Timothy Waweru** an advocate of this Honourable Court and practicing as such with the firm of M/s B. Mbai & Associates Advocates. He says that his firm was instructed to represent the Respondent in Nairobi **HCCC No. 2413 of 1998 – Gachanja Nduga & Others –vs- Mbo-I-Kamiti Farmers Company Limited & Others** after which the applicant filed his Bill of Costs but that the Respondent has failed, ignored and/or declined to honour the Certificate of Costs. The deponent supported his averment by annexing a copy of the Certificate of Taxation marked “**KTW 1(a)**” and dated July 6, 2007, a copy of which was forwarded to the Respondent vide the applicant’s letter dated August 16, 2007. The deponent also says that the Respondent has not raised any objection on the ruling on taxation of the applicants’/Advocates’ Bill of Costs. Finally, the deponent says that there is no dispute as to the retainer by the Defendant since the taxed costs have not been contested by the respondent.

4. The Respondent who was duly served with both the application and a hearing notice dated February 27, 2008 did not attend court nor did it file any Replying papers. Service was effected by registered post on February 28, 2008. The application thus proceeded *ex parte* before me on June 26, 2008 for hearing.

5. This application is brought under section 51(2) of the Advocates Act, Cap 16 Laws of Kenya and Rule 7 of the Advocates (Remuneration) Order. Section 51(2) provides as follows:?

“51 (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, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

While Rule 7 of the Advocates (Remuneration) Order provides that

“7. An advocate may charge interest at 9 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

6. It is not in dispute that the advocate-applicant represented the Respondent in Nairobi HCCC No. 2413 of 1998 (above). It is also not disputed that the applicants Bill of Costs was taxed on July 6, 2007 and a Certificate of Taxation issued to that effect. It is also not disputed that the Bill of Costs was delivered to the Respondent on August 16, 2007 by registered post; and that no contest has been raised by the Respondent about the said Bill. In light of the above findings I have no doubt in my mind that the applicants' application has merit. Accordingly, I allow the same and make the following orders:-

(a) Judgment be and is hereby entered for the Applicant-advocate as against the Respondent in the sum of Kes 65,877/40 being the taxed costs due to the applicant.

(b) The Respondent do pay to the applicant advocate the said sum of money plus interest at 9 per cent per annum from the 16th day of September 2007

(c) Costs of this application shall be paid to the applicant.

Orders accordingly.

Dated and delivered at Nairobi this 4th day of July 2008.

R.N. SITATI

JUDGE