

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI LAW COURTS)

Misc Civ Appli 356 of 2006

NJOGU & COMPANY ADVOCATES.....APPLICANT

VERSUS

SAVINGS AND LOAN KENYA LIMITED.....RESPONDENT

R U L I N G

The Applicant/Advocate herein seeks, by notice of motion dated 31st July, 2006, judgment for taxed costs under Section 51 (2) of the Advocates Act, Cap. 16, upon the grounds that the certificate of taxation has not been altered or set aside and that it is fair and just that judgment be so entered. The Respondent/Client has opposed the application upon the grounds (as set out in the replying affidavit filed on 7th December, 2006) that the Applicant's fees have been paid in full; that this issue was raised before the taxing officer who made no decision thereon; that the Respondent is desirous of challenging the taxation under rule 11 of the Advocates (Remuneration) Order, having duly lodged notice in that regard, but cannot do so as yet as the reasons for the taxation have not been supplied to it; and that the application for judgment is premature.

I have considered the submissions of the learned counsels appearing. There does not appear to be any dispute with regard to retainer, and it is common ground that the certificate of taxation has not been altered or set aside. Under section 51 (2) of Cap. 16 aforesaid, the court may make such order in relation to a certificate of taxation that has not been set aside or altered 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. It is a matter for the court's discretion. Judgment for taxed costs will not necessarily always be available under the aforesaid statutory provision simply because there is no dispute as to retainer and the certificate of taxation has not been altered or set aside.

In the instant case the Respondent has raised the serious issue that the Applicant's costs have been paid in full. That is a matter for evidence. The issue was raised before the taxing officer; I have perused the record, and no decision thereon was made on that issue. The Respondent must therefore be given an opportunity to raise that defence in a proper suit for the Applicant's costs commenced by plaint.

In the event therefore, I must refuse the application. It is hereby dismissed with costs. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF MARCH, 2007.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 23RD DAY OF MARCH, 2007.