



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Misc Civil Appli 102 of 2007

D. NJOGU & CO..... APPLICANT

VERSUS

CITY COUNCIL OF NAIROBI.....RESPONDENT

RULING

The Applicant in this Notice of Motion application is an advocate who seeks judgment for taxed costs as per certificate of taxation issued by the taking master of this court on 8th June, 2007. He also seeks interest and costs.

The Applicant is based on four grounds as follows:

- a) **The Advocate-Client costs due to the Applicant herein were taxed at Kshs.585,605.00/= on 29th May 2007 and a certificate of taxation dated 8th June 2007 issued to that effect.**
- b) **The said certificate of taxation has not been set aside, reviewed and/or varied.**
- c) **There is no dispute that the Respondent had retained the Applicant herein as its advocates in Nairobi HCCC NO. 1763 OF 2002 (Central Registry) – ESTHER WANGARI SACH T/A EWASA WINES & SPIRITS VS CITY COUNCIL OF NAIROBI AND CHAMGAA COMPANY LIMITED in respect of which the Advocate-Client costs were taxed herein.**
- d) **It is only fair and just in the circumstances that judgment be entered for the sum certified to be due to the applicant herein.**

There is also a supporting affidavit sworn by the Advocate in which he annexes several documents. The Advocate has annexed a letter of instruction from the Defendant in which the Defendant instructed it to defend HCCC NO. 1763 of 2002 (Nairobi) dated 2nd December, 2002. The Advocate has also annexed a Notice of Appointment to act for the client herein, dated same day. The Advocate annexed a letter from the client dated 15th November, 2006 withdrawing instructions from the Advocate in all matters in which the Advocate was acting for the client.

The Advocate has annexed a final fee note which he depones was not paid. It was due to failure to settle the fee note that the Advocate filed it in court for taxation.

I note from the file that the bill of costs was taxed by consent of both the Advocate and the Client's

Advocate at an all inclusive sum of Kshs.585,605/=. The Advocate depones that the costs have however never been paid. Mr. Mugambi who argued the application for the Advocate, submitted. Counsel stated that the costs have not been paid and neither has the certificate of costs been varied, set aside or revised in any way.

I have considered this application. It is brought under Section 51(2) of the Advocates Act, which provides that a certificate of taxation is final as between the parties. The taxation in this case was agreed between the parties and consent order made in the terms agreed. As such there is no surprise that this application is unopposed.

I am satisfied that there is not dispute as to retainer. The Advocate is entitled to his costs which have remained outstanding for a long time. I will allow the application in terms of prayer 1, 2 and 3.

Dated at Nairobi this 26th day of October, 2007.

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of

Njenga for Applicant

N/A for Respondent

LESIIT, J.

JUDGE