



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

MISC APPLI 386 OF 2007

J. K. KOSKEI & CO. ADVOCATES.....PLAINTIFF

VERSUS

STANDARD ASSURANCE LIMITED.....DEFENDANT

RULING

The Notice of Motions dated 9th October 2007 has been filed by the Applicant/Advocate against the Client under Section 51 of the Advocates Act, Order L rule 1 of Civil Procedure Rules and Section 3A of Civil Procedure Act. It seeks judgment on taxed costs as found due by the Deputy Registrar on the 11th May 2007 with costs. Two reasons are given as grounds for the application. One that the costs have already been taxed and a certificate issued and, two the client is yet to pay for the same.

There is an affidavit in support of the application, sworn by **NELSON SITONIK**, on behalf of the Advocate. The Advocate annexes the Certificate of Taxation and depones that to his knowledge, the certificate has neither been challenged nor altered. He also depones that there is no dispute as to the retainer.

I have considered this application. I note from the file that an application was heard inter parties before the Deputy Registrar, in which the Client/Respondent sought unsuccessfully, to have the exparte taxation stayed and the certificate of taxation set aside. The basis of the application was that the application was premature and that there was still a suit pending before Kiambu Court, out of which this Miscellaneous Application was filed. The Court declined to set aside the certificate on grounds no good cause was shown.

There was no issue raised challenging the retainer in the application argued before the Deputy Registrar. I find there is therefore no dispute as to the retainer.

The Advocate has to show, under Section 51(2) of the Advocate Act to show:

- a) that a bill of costs has been taxed and a certificate issued by the Officer who taxed it;
- b) the certificate has not been set aside, varied or stayed by a court and;
- c) there is no dispute as to the retainer.

I do find that the Advocate/Applicant has satisfied all three requirements under the quoted section, a Certificate of Taxation is final between the parties as to the costs payable to the Advocate.

The Applicant deserves to be paid his costs. This application is merited. I do hereby allow it and enter judgment for the Advocate against the Client on the sum of Kshs.58,175/= with costs of the application.

Dated at Nairobi this 16th day of November, 2007.

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of:

N/A

LESIIT, J.

JUDGE