



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI(MILIMANI COMMERCIAL COURTS)

MISC CIV APPLI 1398 OF 2007

D. NJOGU & CO. ADVOCATES.....APPLICANT

VERSUS

TEMA HOME CARES CO. LTD.....RESPONDENT

RULING

This application has been brought by D. Njogu & Co. Advocates, hereinafter referred to as the Advocate, against **TEMA HOME CARES CO. LIMITED** hereinafter referred to as the Client. The Advocate has brought the application by way of a Notice of Motion dated 30th July, 2007 expressed to be brought under Order L rule 1 of Civil Procedure Rules, Section 51(2) of the Advocate Act and Rule 7 of the Advocates (Remuneration) order. The Applicant seeks three prayers as follows:

- 1. THAT judgment be entered for the Applicant as against the Respondent for the sum of Kshs.35,860/= being the certified costs due to the Applicant.**
- 2. THAT the Respondent do pay to the Applicant interest on the certified costs at the rate of 14% per annum from 31st December 2006 until payment in full.**
- 3. THAT the Respondent do pay to the Applicant the costs of this application.**

There are four grounds cited in support of the application

as follows:

- a) The Advocate-Client costs due to the Applicant herein were taxed at Kshs.38,860/= and a certificate of taxation dated 29th 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 a labour dispute at the Nairobi District Labour Office, lodged by 30 former employees of the Respondent, for compensation in lieu of unlawful termination of employment and alleged non-payment of terminal dues amounting to Kshs.137,955/= in respect of which 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.**

The Advocate has filed a supporting affidavit in which he

has annexed several annextures. “**DN1**” is the letter of instructions by the Client to the Advocate dated 1st August, 2003. “**DN2**” is the demand letter from the Nairobi Labour Office dated 29th July, 2003. “**DN3**” is a letter by the Advocate to the District Labour Office in response to their letter, dated 5th August, 2003.

All these are proof that the Advocate was instructed to act for the client. The Advocate depones that the fee note was not settled and therefore he filed the Advocate-client Bill of costs on 20th December, 2006. The said Bill of Costs was taxed and a Certificate of Taxation issued on 18th July, 2007. It is annexure “**DN5**”. The Advocates Bill was taxed at Kshs.35,860/= The Advocate depones that the certificate of taxation has not been set aside, varied or reviewed in any way. The Advocate also depones that there is no dispute as to the retainer.

The application was argued by Mr. Njenga for the Advocate. The Client’s Advocates on record, Kwame & Associates, were served with the hearing notice. No papers were filed nor did the firm of Advocates attend the hearing of the application. This application is therefore unopposed.

The Advocate has to meet the requirements of Section 51(2) of the Advocates Act in order to obtain judgment for the taxed costs. The Section provides:

“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.”

The section is very clear. The conditions to be met are:

- a) A certificate of the Taxing Officer by whom their bill was taxed has been issued;
- b) The certificate of taxation has not been set aside or altered by the court; and
- c) The retainer is not disputed.

I note from the file that when the Bill of costs went for

Taxation before the Taxing Officer, the Advocate and the Client’s Advocate agreed to file written submissions. Only the Applicant filed theirs. The Client filed none. The Taxing Officer considered the submission and taxed the bill of costs. It is then that the Taxing Officer issued the Certificate of Taxation herein. That Certificate has not been set aside, or varied by the court. In the circumstances there cannot be any dispute as to the retainer.

I am satisfied that the Advocate has met the conditions set under Section 51(2) of the Advocates Act. The section is applicable where there is no dispute about the retainer. It makes it expedient and less costly for the Advocate to obtain a quick judgment. The Advocate has brought himself within the provisions of this section and in the circumstances he is entitled to the judgment sought.

I will allow the Application in terms of prayers 1 and 2 of the Application dated 30th July, 2007 with costs of the application going to the Advocate.

Dated at Nairobi this 9th day of November, 2007.

LESIT, J.

JUDGE

Read, signed and delivered in the presence of:

Imende for Njenga for Applicant

LESIT, J.

JUDGE