



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

MISC CIV APPLI 469 OF 2007

WAKINI KIARIE & CO. ADVOCATES..... APPLICANT/APPLICANT

VERSUS

INVESCO ASSURANCE COMPANY LTD.....CLIENT/RESPONDENT

RULING

The application has been brought by **WAKINI KIARIE & COMPANY ADVOCATES**, hereinafter referred to as Advocate, against the **INVESCO ASSURANCE CO. LTD** hereinafter referred to as the Client. It is a Notice of Motion brought under the provisions of Order L rule 1 of Civil Procedure Rules and Section 51 (2) of the Advocates Act and Rules under the Advocate (Remuneration) order. It seeks Judgment for the Advocates against the client in the sum of KShs.50,167.20 with interest at court rates and costs of the application. Three grounds are cited on the face of the application which are that there is no stay of execution in place, the Advocates Bill has not been paid and the certificate of taxation has not been set aside.

There is a supporting affidavit sworn by JEMIMAH WAKINI KIARIE in which the Advocate depones that on the 9th April, 2003 the Client instructed the Advocates' firm to act for them in **CMCC NO.7895/02** between **EARS GROUP LIMITED VS JOYCE KINUTHIA**. The Advocates continue to depone that in February 2006, the Client declined to pay the fee note presented to it by the Advocate following which they presented it for taxation. The Advocate continues to depone that the bill was taxed on 18th May, 2007 at KShs.50,167.20 and the certificate of taxation issued. It is annexed as "**JWKIa**". The Advocate depones that there is no dispute as to retainer.

Mrs. Ngugi argued this application on behalf of the Advocate. The Client was unrepresented at the hearing and filed no papers in response, despite being served with notice of the hearing.

I have considered the application. Under Section 51 (2) of Advocates Act, the Advocate should establish that a certificate of the Taxing Officer by whom the bill was taxed has been issued, that the said certificate of taxation has not been set aside or altered by the court; and that the retainer is not in dispute.

The Advocate has annexed the certificate of taxation. It has not been shown to have been set aside, varied or altered by the court. I note from the file that the client did not attend the taxation before the Taxing Officer. The Taxing Officer satisfied himself that there was no dispute as to retainer before carrying out the taxation. There is therefore no dispute as to retainer. The certificate of taxation issued is final under Section 51(2) of the Advocate Act. It has not been challenged in any way nor has it set aside or varied. Having come to this conclusion I enter Judgment for the Advocate as prayed for in the Notice of Motion dated 6th August, 2007 in the sum of Kshs.50,167.20 with interest at court rates and costs of the application.

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

LESIIT

JUDGE

Read, signed and delivered in the presence of:

Mr. Imende for Mrs. Ngugi for Applicant

LESIIT

JUDGE