



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
(MILIMANI COMMERCIAL COURTS)
MISC APPL1084 OF 2006

A. M. KIMANI & COMPANY ADVOCATES.....APPLICANT/ADVOCATES

VERSUS

KENINDIA ASSURANCE COMPANY LIMITED.....DEFENDANT/CLIENT

RULING

This is an application which has been brought by **A. M.**

KIMANI & CO. ADVOCATES by way of Notice of Motion against their client **KENINDIA ASSURANCE CO. LIMITED**. The application is expressed to be brought under Section 51 of Advocate Act and Order L rule 1 of Civil Procedure Rules. It seeks that the costs certified to be due by the Deputy Registrar on 8th December, 2006, be made judgment of the Court and that the said costs be paid with interest at the rate of 9% per annum from 19th October, 2006 to 17th November, 2006, and at 14% until 12th March, 2007, when the Respondent paid Kshs.5,890/= and the balance thereof of Kshs.25,858.20/= do continue attracting interest at 14% per annum until payment in full. It also seeks that the costs of the application be assessed at Kshs.3,000/=.

There is an affidavit in support of this application, sworn by **ANN N. KIMANI** the Advocate/Applicant dated 16th July, 2007. This application was served on the Advocates Client's Messrs **WAKINI KIARIE & CO. ADVOCATES**, on the 25th July, 2007. However, despite service, no papers have been filed. The application is therefore not challenged. The Applicant has, in her affidavit in support thereof, deponed that the retainer was not in dispute. She then annexes a letter from the Clients

Advocate, Wakini Kiarie & Co. Advocate, dated 12th March, 2007, advising that the cheque for Kshs.5,890/= was enclosed for part of the taxed costs and advising that the balance of the costs were settled in 2004. The Advocate has also annexed a certificate of taxation dated 8th December, 2006 marked “**AMKI**”. The certificate indicates that the Advocates costs were taxed at Kshs.29,748.20. The Applicant now seeks judgment in the sum taxed less Kshs.5,890/= paid to the firm on an earlier date.

The Advocate has deponed that since the costs were taxed, and certificate issued, there has not been any objection raised nor appeal filed neither has the certificate been set aside or the costs as taxed paid.

Under Section 51(2) of the Advocate Act the Advocate is entitled to judgment in the sum certified to be due to them by the Deputy Registrar as their costs against the Client so long as the conditions set out in that section are established. These conditions are:

- a) A certificate of the taxing officer by whom their bill was taxed has been raised;
- b) the said certificate has not been set aside or altered by the court; and
- c) the retainer is not disputed.

The Section further provides that the certificate of the taxing officer is final as to the amount of costs covered thereby.

I have considered this application and the affidavit sworn in its support, the annexures thereto and submissions by Mrs. Thang’ei Advocate, on behalf of the Advocate/Applicant. In regard to the prerequisites to entry of judgment on taxed costs, I am satisfied that there is no dispute as to retainer. The Client did infact pay part of the bill, when it was served with the certificate of costs before this application was made. There was no opposition to this application despite service which is a clear indication that not only is the retainer not in dispute but also the certificate of costs is not challenged. I am satisfied that the advocate has complied with the conditions set out under Section 51(2) of the Advocates Act. The certificate of costs by the Taxing Master is final as to costs. I am satisfied that the advocate is entitled to sought costs

Under prayer 2 of the application, the Advocate explains why it is claiming less sums than the sum certified by the taxing officer to be due. That explanation tallies with the letter from **WAKINI KIARIE & CO. ADVOCATES** in which a cheque of part of the costs was enclosed. I am satisfied that the Advocate is entitled to the sum claimed in this application.

As to interest on costs, Rule 7 of the Advocate (Remuneration) Rules allows for interest to be charged on costs. The Advocate therefore is also entitled to interest on the taxed costs as claimed. I will allow the Application by entering judgment for the Advocate against the Client as prayed in prayer (a) and (b) of the application. Costs of the application is granted at Kshs.3000/=. That is a reasonable sum for costs and it is also allowed.

Dated at Nairobi this 2nd day of November, 2007.

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of:

Ms. Kimani for Applicant

LESIT, J.

JUDGE