



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

Misc Civil Appli 107 of 2007

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

VERSUS

CITY COUNCIL OF NAIROBI.....RESPONDENT

RULING

This application has been brought by D. Njogu & Co. Advocates, hereinafter referred to as the Advocate, against CITY COUNCIL OF NAIROBI hereinafter referred to as the Client. The Advocate has brought the Application by way of a Notice of Motion dated 14th June, 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.243,000.00 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.243,000.00/= and a certificate of taxation dated 28th May, 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. 1633 of 2000 (Central Registry) – Wanangege**

Co-operative Savings & Credit Society Limited vs Paul Musili, City Council of Nairobi & Others 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 which he has annexed several annexures “DNI” is the letter of instructions by the client to the Advocate dated 28th November, 2002. “DN2” is the notice of appointment which the Advocate filed in **NAIROBI HCCC NO. 1633 OF 2000 WANADEGE CO-OPERATIVE SAVINGS AND CREDIT SOCIETY LIMITED VS PAUL MUSILI, CITY COUNCIL OF NAIROBI AND OTHERS** “DN3” is a letter by the client to the Advocate dated 15th November, 2006 in which the Client withdrew its instructions from the Advocate. “DN4” is the fee note raised by the Advocate dated 1st December, 2006. The Advocate depones that the fee not settled and therefore he filed Advocate-client Bill of costs on 25th January, 2007. The said was taxed and a certificate of Taxation issued on 28th May, 2007. It is annexure “DN5” the Advocates Bill was taxed at Kshs.243,000/=. 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. Mugambi for the Advocate. The Client was served with the hearing notice. It neither filed any papers nor attended 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. These conditions 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 through its counsel entered consent on the taxation. The taxation 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 taking into account that the Bill of Costs was taxed by consent, 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 14th June, 2007 with costs of the application going to the Advocate.

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

LESIIT, J.

JUDGE

Read, signed and delivered in the presence of:

LESIT, J.

JUDGE