



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIRONI(MILIMANI COMMERCIAL COURTS)

MISC CIVIL APPEAL 898 OF 2006

S. O. OWINO & ASSOCIATES ADVOCATES..... APPLICANT

VERSUS

MOHAMED ASIF KASSAM.....1ST DEFENDANT

DASSAM ABDULGANI & BROS (NRB) LTD.....2ND DEFENDANT

RULING

This application is a Notice of Motion dated 22nd February, 2007. It is brought by **S. O. OWINO & ASSOCIATES ADVOCATES** against the clients as named in the application. The Advocates seeks proof for taxed costs at KShs.27,775/= being the amount certified to be due by the Taxing Master on 18th December, 2006 and for interest at 9% per annum from 23rd October, 2006 until payment in full. It also seeks costs of the application.

The grounds for the application are that the bill of costs was taxed by the Deputy Registrar on 23rd October, 2006 at Kshs.27,775/= in favour of the Advocate/Applicant and a certificate of taxation issued on 18th December, 2006. The other grounds are that the taxation has not been altered, named or set aside. There is affidavit sworn in support of the Applicant. In paragraph 2 of the affidavit, the Applicant/Advocate depones that his firm was duly instructed by the Respondent to act for and represent the Respondents in Nairobi CMCC No.7501 of 2004, in which the Respondents were the Defendants. The Advocates annexes the certificate of taxation dated 18th December, 2006 as proof the bill of costs was taxed a certificate of taxation in the sum found due of KShs.27,775/=. The Advocates depones that the Respondents failed to pay after demand was made. The demand letter is annexed as “**S.O.2**”.

Mr. Maweu argued the application for the Advocate. Counsel submission repeated what was deponed to in the Advocates supporting affidavit.

I have considered the application. The Respondents were served with the application and the hearing notice and in spite of that notice, none appeared for the hearing of the application nor were any papers filed in opposition. The application is therefore unopposed. The application is brought under Section 51 (2) of the Advocates Act and Order L rule 1 of Civil Procedure Rules. Section 51 (2) of the Advocates

Act 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 Applicant has no prove that a certificate of the Taxing Officer by whom their bill was taxed has been issued; the said certificate of taxation has not been set aside or altered by the court; and the retainer is not disputed.

The Applicant has annexed certificate of the Taxing Officer as proof the taxation took place and the certificate issued. There is no evidence that the certificate has been challenged or set aside or that the retainer is in dispute.

Under Section 51 (2) of the Act, where a certificate of taxation had neither been set aside nor altered by the court and where there was no order of stay, the certificate was final as to amount of costs covered thereby. The Advocate, having met the requirements of the said provisions is entitled to judgment as sought.

Having come to this conclusion I allow the application and enter judgment for the Applicant against the Respondents in the sum of KShs.27,775/= with interest at 9% per annum from 23rd October, 2006 until payment in full. The Applicant also gets the costs of the application.

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

LESIT, J.

JUDGE

Read, signed and delivered in the presence of:

LESIT, J.

JUDGE