

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI COMMERCIAL COURTS

Misc Appli 500 of 2005

P. K. MUREITHI & COMPANY ADVOCATESAPPLICANT

VERSUS

1. JAMES W. CHEGE1ST RESPONDENT

2. JOEL KYALO KAINDI2^D RESPONDENT

3. DORIS NTINYARI MANYARA3RD RESPONDENT

4. NTIKYA ENTERPRISES LTD.....4TH RESPONDENT

RULING

When this matter was first called out in court at 9.00 a.m. the Respondents' advocate brief was held by Mr. E. K. Mutua. When this matter was later called out at 10 a.m. the said advocate was not in court and the Respondents was not therefore represented. The Applicant proceeded to argue its application dated 8th December, 2005. That application is brought under section 51 of the Advocates Act. Its seeks judgement to be entered in favour of the Applicant against the Respondents for Kshs.3,562,553/= being taxed costs together with interest at 14% per annum from 10th June, 2005 until payment in full. The application is based on the grounds that those costs were taxed between advocate and client on 24th November, 2005. A certificate of taxation was annexed to the supporting affidavit. The supporting affidavit also states that the said taxation had not been altered or set aside and that therefore the amount taxed is the final amount of costs recoverable by the Applicant. It was also stated in the affidavit that retainer is not disputed.

The Applicant at the conclusion of its argument prayed that the respondents' application dated 16th August, 2006 be dismissed for non attendance. As stated hereinbefore when this matter was called out the respondent was absent. Accordingly there is no reason why this court should not accede to the prayer for the dismissal of the Respondent's said application.

The Applicant has moved this court by Section 51 of the Advocates Act. Section 51(2), the certificate of taxation unless it is set aside or altered by the court is said to be the final amount of the costs covered therein. That subsection states that the court may make such orders thereto as it thinks fit including in case where a retainer is not disputed and order the judgement be entered for the sum certified. There is no evidence before court to show that the retainer is disputed by the Respondents. There is indeed on record a certificate of costs which has not been altered or set aside. On that basis the Applicant has made out a case for judgement to be entered in its favour for the amount taxed. The Applicant's claim for interest at the rate of 14% however, will not be granted for under Rule 7 of the Advocates (Remuneration) Order an advocate may charge interest at 9% per annum on his disbursements and costs from the expiry of 1 month of delivery of his bill to the client. There was no evidence presented to court showing that the applicant presented its bill to the Respondents as stated above. The court, however, will allow interest at court rate for the amount taxed. The order of the court therefore that:-

1. **Judgement be and is hereby entered in favour of the applicant against the respondent jointly and severally for the sum of Kshs.3,562,553/= together with interest from the date of this judgement at court rate.**
2. **The Applicant is awarded costs of the Chamber Summons dated 8th December, 2005.**
3. **That the Respondent's application dated 16th August 2006 is hereby dismissed for non attendance with costs to the Applicant.**

MARY KASANGO

JUDGE

Dated and delivered this 19th October, 2006.

MARY KASANGO

JUDGE