

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

MILIMANI COMMERCIAL COURTS

Misc Appli 498 of 2005

P. K. MUREITHI & COMPANY ADVOCATES
.....APPLICANT

VERSUS

- 1. JAMES W. CHEGE1ST RESPONDENT**
- 2. JOEL KYALO KAINDI2ND RESPONDENT**
- 3. DORIS NTINYARI MANYARA3RD RESPONDENT**
- 4. NTIKYA ENTERPRISES LTD.....4TH RESPONDENT**

RULING

When this matter was first called out at 9.00 a.m. the Respondent's advocate brief was held by Mr. E. K. Mutua. When the matter was called for hearing at 9.45 a.m. the Respondent was not represented and the matter proceeded in the presence of the Applicant alone. The Applicant argued its Chamber Summons dated 8th December, 2005 brought under Section 51 of the Advocates Act. The application seeks that judgement be entered for the applicant against the Respondent for Kshs.491,575/= being taxed costs with interest at the rate of 14% per annum. The application is brought on the ground that the amount of the Kshs.491,575/= was the amount of costs that were taxed on the 24th November, 2005. The supporting affidavit annexed the certificate of taxation. It was deponed in the supporting affidavit that the certificate of taxation had not been altered or set aside and that accordingly the amount therein was the final amount of costs recoverable by the applicant.

The Applicant has moved under Section 51 of the Advocates Act. Section 51(2) provides that unless the certificate of taxation is set aside or altered by the court it is to be regarded that the final amount of costs recoverable therein. That subsection further states that if the retainer is not disputed the court may make an order that a judgement be entered for certified costs. There is no record of setting aside or altering the certificate of costs and the Applicant's prayer for judgement is merited. It ought to be noted that the Applicant did pray that the respondent's application dated 29th September, 2006 be dismissed for non attendance. As stated hereinbefore the Respondent failed to attend the hearing of this matter and the applicant's application will therefore be granted. In that regard the orders of this court are:-

- 1. That judgement be and is hereby entered by the applicant against the respondent for Kshs.491,575/= together with interest at court rate from the date of this judgement until payment in full.**
- 2. The Applicant is granted costs of the Chamber Summons dated 8th December, 2005.**
- 3. The respondent's Chamber Summons dated 29th September, 2006 is hereby dismissed with costs to the applicant for non attendance.**

MARY KASANGO

JUDGE

Dated and delivered this 19th October, 2006.

MARY KASANGO

JUDGE