

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Civ Appli 613 of 2004

OGONJI & TIEGO ADVOCATES.....APPLICANT

VERSUS

SAMUEL KINYUA MUTUGI1ST RESPONDENT

STANDARD COMMERCIAL INVESTIGATIONS LTD....2ND RESPONDENT

RULING

The advocate with bill of costs has filed a Notice of Motion dated 26th July, 2006. The application is brought under Section 51(2) of the Advocates Act. The orders it seeks are for judgement to be entered for the taxed costs of Kshs.203,160/=. In the alternative the advocate seeks for judgement for Kshs.76,742/= which amount was conceded by the Respondent during taxation. The affidavit in support of the application the advocate confirms that a bill of costs was lodged and was taxed on 10th April, 2006. The taxed amount was Kshs.203,160/=. That at the time of taxation the Respondent conceded to costs of Kshs.76,742/=. That to date the Respondent has not paid either the taxed amount or the amount conceded during taxation. A certificate of taxation was issued by the taxing master and is dated 7th June, 2006. The Respondent opposed the application and the opposition was only on the basis that it has raised objection to the taxation which objection was filed on 15th May, 2006.

Under paragraph 11(1) of the Advocates (Remuneration) Order when a party wishes to object to a decision of the taxing officer they should within 14 days after the decision give notice in writing to the taxing officer of the items of which they object to. The taxation in this matter as stated before was on 10th April, 2006. The objection filed by the Respondent although dated 24th April, 2006 was not filed in court until 15th May, 2006. That period is certainly out of the period envisaged by paragraph 11(1) of the Advocates (Remuneration) Order. Therefore, the only basis upon which the Respondent opposes the application being the objection raised the same being defeated by that paragraph it cannot stand against the prayers which are sought. The advocate has moved under Section 51(2) of the Advocates Act. That section provides that a certificate of taxation unless it is set aside or altered by the court shall be the final amount of costs recoverable thereby. That section provides that the court can make such an order in relation to that certificate of taxation as it thinks fit, including in case where a retainer is not disputed, order that judgement be entered for the taxed costs. In this case there is a certificate of taxation signed by the taxing officer and there has not been any dispute in respect of retainer. In view of that the court finds that the advocate is entitled for judgement to be entered for the taxed amount. The court therefore, enters judgement in favour of the Applicant for Kshs.203,160/= together with interest from 10th April, 2006 until payment in full. The applicant is also granted costs of the Notice of Motion dated 26th July, 2006. Orders accordingly.

MARY KASANGO

JUDGE

Dated and delivered this 19th day of December, 2006.

MARY KASANGO

JUDGE