

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION – MILIMANI
Misc Case 31 of 2005

KHAN & KATIKU ADVOCATES.....PLAINTIFF
VERSUS
SHABBIR MOTORS SPARES LTD.....DEFENDANT

RULING

This application is by a firm of Advocates. It is brought under Order XXXV Rule1, Section 3A of the Civil Procedure Act and Section 51 of the Advocates Act Cap.16 of the Laws of Kenya. It seeks judgment in terms of a Certificate of Taxation dated 30.6.2005. The grounds for the application are that the said Certificate of Taxation is conclusive proof of the costs due from the Defendant to the applicants and that the Defendant is truly and justly indebted and was so indebted at the commencement of this suit to the Applicant in the sum of Kshs 145,087.40.

The application is supported by an affidavit sworn by JOHN KATIKU a partner in the Applicant firm of Advocates. To the said affidavit are annexed a copy of an Advocate/Client Bill of Costs and a Certificate of Taxation. The application is not opposed.

I have read the application and the supporting affidavit together with the annexures. I have also heard Counsel in his submission that the Applicant's application be allowed as prayed. Having done so, I take the following view of the matter.

Section 51 (2) of the Advocates Act (Cap.16 of the Laws of Kenya) reads:

“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.”

This section gives the Court discretion to enter judgment where a suit has not been filed for recovery of costs due to an Advocate. This discretion is however, exercisable where there is no dispute as to the retainer and a Certificate of the Taxing Officer has been issued and has not been successfully challenged.

The Applicants have satisfied the requirements of Section 51(2) of the Advocates Act (Cap.16 of the Laws of Kenya) and are entitled to judgment for the sum in the Certificate of Taxation. Accordingly there will be judgment for the Applicants in the sum of Kshs 145,087.40.

The Applicants shall also have the costs of this application.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF NOVEMBER, 2005.

F. AZANGALALA

JUDGE