



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW NO. 4 OF 2020**

**KENNEDY NGAIRA & ASSOCIATES ADVOCATES.....APPLICANT**

**VERSUS**

**1. THE BOARD OF DIRECTORS/TRUSTEES OF BARAKA FM**

**2. BARAKA FM LIMITED.....RESPONDENTS**

**RULING**

1. The Notice of Motion dated 24/9/2020 prays for the following order:

- (a) That the Certificate of Taxation dated 20/2/2020 for the amount of Kshs. 304,518/= be deemed as the Judgment and Decree of this Honourable Court.
- (b) That interest of 14% to accrue from the date of issue of Certificate of Taxation till payment in full.
- (c) That costs of this application be provided for.

2. The motion is premised on the grounds that the Applicant herein filed Advocate/Client Bill of Costs dated 8/11/2019 arising from Mombasa High Court Constitution Petition No. 30 f 2017 – Mombasa Pastors Fellowship Association vs. 1. The Board of Directors/Trustees of Baraka FM 2. Baraka FM Limited & 3 others upon instructions from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents; that the Respondents herein appointed the firm of Kennedy Ngaira & Associates Advocates to represent them in said matter; that the Bill of Costs was taxed at Kshs. 304,518/= and a Certificate of Taxation was issued on the 11<sup>th</sup> March, 2020; that the Respondents have not filed a reference in regard to the same taxation order; that the said Certificate of Taxation has not been set aside since it was issued; that the Applicant is unable to proceed to carry out the execution process as to recover the amount as there is no Decree; that the overriding objectives under Section 1A, 1B and 3A the Civil Procedure Act Cap 21 and Section 51 (2) of the Advocates Act Cap 16 of Laws of Kenya should come to the aid of the Applicant so as not to prolong proceedings and add to costs and that this application is made in the interest of justice.

3. The motion is supported by affidavit of Kennedy Ngaira sworn on 28/9/2020.

4. The motion is not opposed. However, it is the duty of this court to establish its merits.

5. I have looked at the aforesaid Supporting Affidavit. Attached to it is Certificate of Taxation issued on 11/3/2020 for the sum of Kshs. 304,518/=. I have also seen an Affidavit of Service sworn by Paul Odhiambo Outah sworn on 19/3/2020 confirming that the Certificate of Taxation was served upon the Respondent on 16/3/2020. I have also seen another Affidavit of Service sworn by the same Paul Odhiambo Outah on 14/10/2020 confirming that he served the Notice of Motion herein upon the Respondent on 13/10/2020. I have also seen an Affidavit of Service sworn on 8/1/2021 by Paul Odhiambo Outah confirming that the hearing notice for the motion on 17/1/2021 was served upon the Respondent on 17/12/2020.

6. It is therefore clear to me that the Respondent has been well informed of the processes herein, right from the taxation and issuance of Certificate of Taxation, to the filing of the motion herein as well as its hearing on 17/1/2021. I am also satisfied that the failure by the Respondent to attend to those proceedings is intentional, and shall not be excused.

7. Further, I am satisfied that the motion is well supported by facts and law, and is merited. I therefore make the following orders:

- (i) **That Certificate of Taxation dated 20/2/2020 for amount of Kshs. 304,518/= is hereby deemed as the Judgment and Decree of this Court.**

**(ii) That interest of 14% shall accrue from the date of issue of Certificate of Taxation till payment in full.**

**(iii) The costs herein shall be for the Applicant.**

**Dated, Signed and Delivered in Mombasa this 4<sup>th</sup> day of February, 2021.**

**E. K. O. OGOLA**

**JUDGE**

**Ruling delivered via MS Teams in the presence of:**

**Mr. Ngaira for Applicant**

**No appearance for Respondents**

**Ms. Peris Court Assistant**