



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**MISCELLANEOUS CIVIL APPLICATION NO. 70 OF 2018**

**JAMES AGGREY MWAMU**

**T/A MWAMU & COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**THE COUNTY ASSEMBLY OF MIGORI.....RESPONDENT**

**RULING**

1. The applicant moved the court by way of Notice of Motion dated 27<sup>th</sup> June, 2019. It was brought under section 51 (2) of the Advocates Act and Rule 7 of the Advocates (remuneration) Order. He is seeking the following orders:

- a) That this court be pleased to convert the certificate of costs in the sum of Kshs.792,329/= into judgment.
- b) That upon grant of prayer 1 above, interest do accrue on the taxed costs at 14% per annum with effect from 11<sup>th</sup> December, 2018 till payment in full.
- c) That the costs of this application be awarded to the applicant.

2. The application was premised on the following grounds:

- a) That the representation/retainer is not disputed.
- b) That the applicant's costs were taxed on 11<sup>th</sup> December, 2018 and a certificate of costs has been issued.
- c) That the certificate is yet to be set aside, reviewed and/or varied.
- d) That the taxed costs remain unsettled to date.
- e) That the application is made in good faith.

3. The respondent opposed the application. Sixteen grounds were raised that I have summarized as follows:

- a) That the services of the applicant were illegally procured.
- b) That the respondent does not have the capacity to sue or be sued.
- c) That the retainer is disputed.

4. I have looked at the record of the original matter that gave rise to the bill of costs herein. At all times, the firm of Mwamu & Company Advocates appeared for the respondents therein and who are the respondents in this application. There was no protest then that the firm had no instructions. The respondent cannot be allowed to dispute the retainer now.

5. Since the taxation, the bill has not been challenged in any way. I therefore dismiss the opposition to the application and allow the application. Orders to issue in terms of prayers ( a) to (c).

**DELIVERED and SIGNED at HOMA BAY this 15<sup>th</sup> day of June, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE.**