



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT MACHAKOS**

**MISCELLANEOUS CIVIL APPL. NO. 178 OF 2017**

**NGAYWA NGIGI & KIBET ADVOCATES.....APPLICANT**

**VERSUS**

**INVESCO ASSURANCE CO LTD.....RESPONDENT**

**RULING**

1. By a notice of motion dated 17.6.2019, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya, Applicant, sought for orders:

**1. THAT Judgment be entered for the applicant against the respondent for Kshs 145,717/- being the certified costs due to the applicant as against the respondent**

**2. THAT the Respondent does pay to the applicant the costs of this application together with interest on the taxed sum**

2. The motion is premised on the grounds set out in the application and supported by the affidavit of Moses Ngaywa Advocate for the applicant deponed on 20.06.2019 to which is annexed the certificate of taxation dated 11.07.2018 marked **MN – 1**.

3. The application is not opposed; there is no indication of any response by the respondent. There is an affidavit of service on record indicating that the respondents were served with the application. Counsel for the respondent attended court on 26.9.2019 and sought for time to file a reply to the applicant's application. Parties also agreed to dispose the application by way of submissions.

4. The applicant's counsel on 24.10.2019 indicated that they would not file any submissions but would rely on their affidavit. Counsel for the respondent was absent and had neither filed a replying affidavit nor grounds of opposition. There were no submissions filed by the respondent at the time of writing this ruling.

5. The issues to be addressed in the application dated 17.6.2019 are whether the judgment, based on the certificate of taxation of costs by the Taxing Officer, should be applied in the **Miscellaneous Application case file 178 of 2017** and whether and order on interest and costs should be made.

6. The application was brought under section 51(2) of the Advocates Act. An advocate armed with taxed or assessed costs and the relevant certificate of taxation should make a formal demand of the assessed amount from the client and whatever amount the client fails to pay, the advocate should proceed pursuant to Section 49 and Section 51 (2) of the Advocates Act. Section 51 Sub-rule (2) provides that due notice of the date fixed for such taxation must be given to both parties and that both parties shall be entitled to attend and be heard. It states that

***“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.”***

7. I have considered the affidavit in support of the application. In the case of **Musyoka & Wambua Advocates Vs Rustam Hira Advocate (2006) eKLR** it was held:-

***“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has discretion to enter Judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....***

8. In the present case, taxation of the bill of costs dated 31<sup>st</sup> July, 2017 was reserved for taxation on 6.3.2018. On the said date, the applicant

appeared before court for taxation while the respondent was absent. The court noted that there was a return of service and hence proceeded to reserve the matter for ruling on the 3.05.2018 when the same was delivered. The bill of costs was taxed at **Kshs 145,717/-**. Certificate of taxation was issued and as it stands now, the same has not been set aside or altered. There is an affidavit of service to the effect that the same was served on the respondent. I find that in terms of Section 51 (2) of the Act there is no reason to deny the applicant the judgement sought. Suffice to add that the respondent did not oppose the application.

9. On the issue of interest, I have considered the provisions of Rule 7 of the Advocates Remuneration Order which provides:-

***“An Advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”***

10. In the result I find merit in the application dated 17.6.2019. Judgement is hereby entered **for the applicant against the respondent for Kshs 145,717/- being the certified costs due to the applicant as against the respondent together** with interest of 14% from the date of taxation. The applicant is awarded costs of the application.

It is so ordered.

**Dated and delivered at Machakos this 7<sup>th</sup> day of May, 2020.**

**D. K. Kemei**

**Judge**