



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

MISCELLANOUS CIVIL APPLICATION NO. 10 OF 2020

GORDON F.O. OGOLA,

KIPKOECH KIPNGETICH T/A

GORDON OGOLA, KIPKOECH

& CO. ADVOCATES.....APPLICANT

VERSUS

GIDEON KIPKOECH NGETICH.....RESPONDENT

JUDGEMENT

1. This judgement is in respect to the Notice of Motion dated 9th September, 2020 filed by the Applicant under the Provisions of Section 51(1) & (2) Advocates Act and Rule 13 A of the Advocates Remuneration Order, 2014, Section 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks orders that: -

(a) That this Application be certified urgent and be heard on priority basis.

(b) That this Honourable court be and is hereby pleased to adopt the Taxing Officer's certificate of costs given on 19th August, 2020 and issued on 20th August, 2020 in favour of the applicants as the judgement of this court for the sum certified to be due.

(c) That the taxed costs do attract interest at court rates from the date of filing of the bill of costs dated 29th June 2020, being 7th July, 2020 until payment in full.

(d) That costs of the Application be borne by the Respondent.

2. The Application is supported by the affidavit of Kipkoech Ngetich advocate sworn on 9th September, 2020 and filed on 23rd September, 2020.

3. The application came up for hearing before me on 5th November, 2020. The court was satisfied that the Respondent had been served with the application and the hearing notice for the same. On record is an affidavit of service dated 29th September 2020 sworn by one Vincent C. Lelgo, process server and filed by the Applicant on 5th November, 2020. The Respondent did not file any response to the application and did not attend court. The court therefore allowed the Applicant to urge the application *ex parte*.

4. In urging the application, Mr. Koigi submitted that the Respondent had been served with the certificate of costs and that he had neither filed a response to the present application nor a reference before the High court disputing the taxed costs. That there was also no dispute that the Respondent had duly instructed the Applicant.

5. The Applicant relied on **Lubulellah & Associates Advocates versus N.K Brothers Limited (2014) eKLR** and **E.W Njeru & Co Versus Zakhem Construction(K) Limited (2013) eKLR** which I have considered. The two persuasive authorities restate the principle that once a court of competent jurisdiction has issued a certificate of costs, and which certificate has neither been altered nor set aside, and barring any reference filed in the high court, the role of the court is to enter judgement upon application by the advocate seeking to enforce payment of his fees.

6. I find the principles stated above to be the correct legal position. **Section 51(2)** of the **Advocates Act** is couched in plain and unambiguous words. It provides:-

“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. In **Winfred Nyakundi Konosi t/a Konosi & Co. Advocates V. Invesco Assurance Company Ltd. (2018) eKLR**, the court stated that:-

“once a certificate of costs is issued and has not been set aside or altered, no other action would be required from the court save to enter judgement upon application”

8. In the present case, the Applicant has stated that he represented the Respondent in **Republic Vs. Gideon Kipchirchir Ngetich, Bomet High Court Criminal Appeal No. 54 of 2017**. The record does not show any dispute that he was so instructed. Further, there is nothing on record to show that the Respondent has filed any Reference in the High Court disputing the taxation. I therefore find that the certificate of costs given under the hand and seal of the taxing officer on 19th August, 2020 remains unchallenged.

9. Consequently, the only order which commends itself to this court is to enter judgment in favour of the Applicant for the amount of Four hundred and fifty-seven and six hundred and one and seventy cents (Kshs.457,601.70). The sum shall attract interest at court rates from the date of this judgement until payment in full.

10. Orders accordingly.

Judgment delivered, dated and signed at Bomet this 3rd day of December, 2020.

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R. LAGAT-KORIR

JUDGE

Judgement delivered in the absence of the Applicant and the Respondent, and in the presence of Kiprotich(Court Assistant).