



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. APPLICATION NO 290 OF 2015

BETWEEN

JAMES AGGREY MWAMU t/a Mwamu & Co. Advocates.....ADVOCATE

AND

SIAYA COUNTY GOVERNMENT.....CLIENT

JUDGMENT

1. By a notice of motion dated 30th April, 2019, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya (*hereinafter referred to as the Act*) and Rule 7 of the Advocates Remuneration Order; the Advocate prays for orders:

- 1) THAT this Honourable Court be pleased to convert the certificate of costs in the sum of Kshs. 317,091.78 into judgment**
- 2) That interest do accrue on the taxed costs at 14% p.a with effect from 27th March, 2017 till payment in full**
- 3) THAT the costs of this application be awarded to the Applicant**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn on 30th April, 2019 by JAMES AGGREY MWAMU, Advocate of the High Court of Kenya. Annexed to the affidavit is a certificate of taxation dated 11th July, 2017 for the sum of **Kshs. 317,091.78**

3. When the application came for hearing on 17th September, 2019, the Respondent, though served on 08th August, 2019 did not file a response to the application or send a representative. The application is therefore unopposed.

4. Section 51 of *the Act* makes general provisions for entry of judgment on a Certificate of Taxation which has not been set aside or altered where there is no dispute as to retainer.

5. In the present case, there is no allegation that the Advocate had no instructions to act for the client in The Advocate avers that he acted for the Appellants in **CIVIL APPEAL NO. 133 OF 2006 COUNCILLOR AKELLO & BONDO COUNTY COUNCIL V COUNCILLOR ALBERT ONYANGO MITERE** for which costs were taxed. The Certificate of Taxation has not been set aside or altered and I see no reason to deny the Advocate, judgment as sought.

6. 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.”

7. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of the Bill of Costs. There is evidence that the bill of costs was received by the respondent on 13th July, 2016 and interest ought to accrue from 13th August, 2016 but the same is granted from 27th March, 2017 as sought by the Applicant

8. The upshot of this is that the notice of motion dated 30th April, 2019 succeeds and is allowed in the following terms:

a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 317,091.78

b) Interest shall accrue on the taxed costs at 14% per annum from 27th March, 2017 until payment in full

c) The Advocate will also have the costs of this application.

DATED AND DELIVERED IN KISUMU THIS 19th DAY OF *September*, 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi

For the Advocate - Ms. Otieno Njoga hb Mr. Mwamu

For the Client -N/A