



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. APPLICATION NO 55 of 2019

BETWEEN

ALICE NYOMENDA OERI T/A A.N.OERI & CO. ADVOCATES.....ADVOCATE

AND

SILVANUS OSORO ONYIEGO.....CLIENT

JUDGMENT

1. By a notice of motion dated 24th July, 2019 and filed on 25th July, 2019, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya (*hereinafter referred to as the Act*), the Advocate prays for orders:

1) THAT judgment be entered and a decree do issue for the sum of Kshs. 4.058,501.80 as certified by the Deputy Registrar per certificate of costs dated 03rd July, 2019 with interest at court rates from 03rd July, 2019 until payment in full

2. The motion is premised on the grounds the advocate was retained by the client to act in **KISUMU CA NO. 22 OF 2018 DENNIS MAGARE MAKORI & ANOR V IEBC & 3 OTHERS** and has failed to pay the advocate's fees.

3. When the application came for hearing on 25th September, 2019 and 15th October, 2019 the client, though served on 09th September, 2019 and 08th October, 2019 respectively 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 **KISUMU CA NO. 22 OF 2018 DENNIS MAGARE MAKORI & ANOR V IEBC & 3 OTHERS** 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 for 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. In an affidavit of service filed on 03rd June, 2019, Leonard Kimanzi Ndewa avers that the bill was served on the client on 09th May, 2019. Interest is therefore payable from 09th June, 2019.

7. The upshot of this is that the notice of motion dated 24th July, 2019 succeeds and is allowed in the following terms:

a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 4.058,501.80

b) Interest shall accrue on the taxed costs at 14% per annum from 09th June, 2019 until payment in full

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

DATED AND DELIVERED IN KISUMU THIS 17th DAY OF OCTOBER 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi

For the Advocate - N/A

For the Client - N/A