



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE-J)**

**MISC. CIVIL APPLICATION NO 06 OF 2019**

**BETWEEN**

**ASHIOYA & COMPANY ADVOCATES.....APPLICANT/ADVOCATE**

**AND**

**RHALPHAEL NDAKALA.....RESPONDENT/CLIENT**

**RULING**

1. By a Notice of Motion dated 30<sup>th</sup> August, 2019 and filed on even date, brought under the provisions of Section 51 (2) of the Advocates Act and Paragraph 7 of the Advocates Remuneration Order, the Applicant/Advocate seeks the following orders:

**1) That this Honourable Court be pleased to order that the Certificate of Costs dated 12<sup>th</sup> July, 2019 be deemed to be a judgment**

**2) That judgment be entered for the Applicant against the Respondent for Kshs. 146,130/- (One hundred forty-six thousand, one hundred thirty) together with interest at 14% p.a until payment in full**

**3) That costs of this application be borne by the Client/Respondent**

2. The Respondent though served neither opposed the application nor sent representation when the matter came up for hearing on 08.10.19.

3. I have considered the Application in the light of the supporting affidavit and annexures thereto. The bill of costs was taxed at Kshs. 146,130/- and a certificate in respect thereof was issued on 12<sup>th</sup> July, 2019.

4. The bill arose out of **Kisumu CMCC 454 OF 2011 Kenya Sugar Research Foundation v Rhalphael Ndakala**. The Respondent has not denied retaining the Advocate to act for him and the Advocate/Applicant is therefore entitled to its costs.

5. Regarding 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.” (emphasis added).**

6. The bill of costs was sent to the Client by Registered post on 16<sup>th</sup> February, 2019 and there being no evidence that it was returned, there is *premafacie* evidence that it was received by the client. Interest is payable from 30 days such delivery which is 16<sup>th</sup> March, 2019.

7. The upshot of this is that Notice of Motion dated 30<sup>th</sup> August, 2019 succeeds and is allowed in the following terms:

**a) Judgment is hereby entered for the advocate against the Client/Respondent for Kshs. 146,130/- (One hundred forty-six thousand, one hundred thirty)**

**b) Interest shall be paid at 14% from 16<sup>th</sup> March, 2019 till payment in full**

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

DATED, DELIVERED AND SIGNED ON THIS 17<sup>th</sup> DAY OF *October* 2019

T.W. CHERERE

JUDGE

**Read in open court in the presence of-**

Court Assistant - Amondi/Okodoi

For Applicant/Advocate -N/A

For Respondent/Client - N/A