



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

MISC. APPLICATION NO. 126 OF 2016

KIMANI & MICHUKI ADVOCATES.....ADVOCANT /APPLICANT

VERSUS

JOSEPH MWANGI GICHUNGW'A1ST CLIENT/RESPONDENT

NANCY MUTHONI GICHUNGW'A.....2ND CLIENT/RESPONDENT

TWIN OAKS LIMITED.....3RD CLIENT/RESPONDENT

RULING

1. This ruling relates to a notice of motion application dated 21st October 2016, brought under the provisions of Section 51(1) and (2) of the Advocates Act Cap 16 Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules 2010, and Sections 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions of the Law.

2. The Applicant is seeking for the following orders;

(i) That the Honourable Court be pleased to enter judgment in favour of the Applicant herein for the sum of Kenya Shillings One Million Three Hundred and Sixty Two Thousand Nine Hundred and Eighty Five (Kshs. 1,362,985.00) only being the sum of costs taxed by the taxing officer;

(ii) That the Honourable Court be pleased to order that the sum of Kenya Shillings One Million Three Hundred and Sixty Two Thousand Nine Hundred and Eighty Five (Kshs. 1,362,985.00) only above said do attract interest at court rates from the date of taxation until payment in full;

(iii) That the costs of this application be provided for.

3. It is supported by an affidavit sworn by Samora Owino dated 21st October 2016 and the annexures thereto. Initially, when the Application was set down for hearing, the Court declined to entertain it on the grounds that the Clients/Respondents had not been properly served; whereupon the Applicant filed a notice of motion application dated 3rd February 2017, seeking for leave to serve the Respondents through substituted service being an advertisement in the daily newspapers. The Application was allowed.

4. I have considered the application dated 21st October 2016, and taking into account an affidavit filed in court today, sworn by James Mutia, the process server deposing that, on 10th May 2018, he caused a publication to be carried out in the daily Nation Newspaper, giving a hearing notice of this application to the Respondents, I am therefore satisfied that the Respondents have been properly served. The application will thus be treated as having been heard unopposed.

5. I note from the annexures to the affidavit in support of the application that, there is an Advocates-client bill of costs dated 9th March 2016 and a notice of taxation dated 2nd June 2016. The certificate of taxation dated 15th August 2016 is also annexed. Finally, I note there is a demand to the clients to pay the satisfied amounts of Kenya Shillings One Million Three Hundred and Sixty Two Thousand Nine Hundred and Eighty Five (Kshs. 1,362,985.00)/= only. There is no evidence that the same was paid.

6. In that case, I allow the notice of motion application dated 21st October 2016, in terms of prayers (1) and (2) save for the fact that prayer

(2) is allowed, with modification that the interest will be at court rates from the date of the certificate of taxation until payment in full. I also award the costs of this application to the Applicant.

7. Those then are the orders of the court.

Dated, delivered and signed at Nairobi this 7th day of June, 2018.

G.L. NZIOKA

JUDGE

In the presence of:

Ms. Kirui holding brief for Mr. Owino for the Applicant

No Appearance for the Respondent

FredCourt Assistant