



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION NO 74 of 2017**

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

**VERSUS**

**AFRICAN MERCHANT ASSURANCE COMPANY LIMITED....RESPONDENT/CLIENT**

**JUDGMENT**

1. By a notice of motion dated 22.5.17, brought under Rule 13 of the Advocates Remuneration Order, 2009; the applicant prays for orders:-

**a) THAT the certificate of costs dated arising out of the taxation be converted into a judgment and a decree be issued accordingly**

**b) THAT interest on taxed costs be awarded at 14% per annum**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of Richard B.O.Onsongo, Advocate of the High Court of Kenya, sworn on 22nd May, 2017. He avers that on instructions from the client, he acted for the defendant in **SIAYA PMCC NO. 71 OF 2009 GEORGE OPIYO ADEDE VERSUS FLORENCE AKINYI OHITO**. He avers that the bill of costs in respect of services rendered was taxed for the sum of **Kshs. 43,848/-** and a certificate of taxation was issued for the said sum on 12th July, 2018. He further avers that the client has not paid the said amount and the applicant requests for judgment for the entire sum.

3. When the application came for hearing on 9.10.18, the respondent's counsel submitted that the application was not opposed.

4. Section 51 of the Advocates Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.

5. There is no dispute as to retainer. As it stands now the Certificate of Taxation has not been set aside or altered. In the circumstances, I see no reason to deny the Advocate, judgment as sought.

6. Rule 7 of the Advocates Remuneration Order provides that: -

***“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 either the Bill of Costs. There is no evidence to show when the Bill of Costs was served. I will therefore apply 15th June, 2017 when the respondent's counsel entered appearance as the date of service of the Bill. Thirty (30) days expired on 15th July, 2017.

8. The upshot of this is that the notice of motion dated 8.8.18 succeeds and is allowed in the following terms:

**a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 43,848/-**

**b) Interest shall accrue on the taxed costs at 14% per annum from 15.7.17 until payment in full**

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

**DATED AND SIGNED IN KISUMU THIS 11th DAY OF October, 2018**

**T.W. CHERERE**

**JUDGE**

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

**Court Assistant** - Felix

**For the Applicant /Advocate** - Ms Ayieta/Ms Onsongo

**For the Respondent/Client** - N/A