



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL APPLICATION NO 125 of 2018

OKONG'O WANDAGO & COMPANY ADVOCATES....APPLICANT/ADVOCATE

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT/CLIENT

JUDGMENT

1. By a notice of motion dated 8.8.18, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya and Paragraph 7 of the Advocates Remuneration (Amendment) Order, 2014; the applicant prays for orders:-

- a) **THAT the certificate of costs dated 31.7.18 between the parties hereto be deemed as the judgment of this Court**
- b) **Judgment be entered for the applicant for Kshs. 165,431/- as stated in the Certificate of Costs**
- c) **Applicant be awarded interest accrued on the costs at 14% p.a from 25th September, 2017 until payment in full**
- d) **THAT the costs of this application be borne by the client/respondent**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of Kennedy Okong'o, Advocate of the High Court of Kenya, sworn on 8th August, 2018. He avers that on instructions from the client contained in the letter of instructions marked KO-1, he acted for defendant in **MASENO SPMCC NO. 223 OF 2013 WILSON MBUYA WADEGU V L.T.MOSES & ANOR**. He avers that the bill of costs in respect of services rendered was taxed for the sum of **Kshs. 165,431/-** and a certificate of taxation was issued for the said sum on 6th August, 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 3.10.18, the respondent, though served on 15.8.18, did not send a representative. The application is therefore not opposed.

4. In the case of **Musyoka & Wambua Advocates Vs Rustam Hira Advocate (2006) eKLR** it was held: -

“Section 51 of the 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. In the present case, there is no allegation that the Advocate had no instructions to act for the client **MASENO SPMCC NO. 223 OF 2013 WILSON MBUYA WADEGU V L.T.MOSES & ANOR** for which costs were taxed and so, there cannot be, a 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. 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 either the Bill of Costs. There is

evidence that the bill of costs was received by the respondent on 6th July, 2018 and thirty (30) days from the delivery of the bill to the client expired on 6th August, 2018.

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. 165,431/-

b) Interest shall accrue on the taxed costs at 14% per annum from 6.8.18 until payment in full

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

DATED AND SIGNED IN KISUMU THIS 4th DAY OF October, 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For the Applicant /Advocate -N/A

For the Respondent/Client - N/A