



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI**

**HCC APPEAL NO.606 OF 2017**

**L.N.MOMANYI & COMPANY ADVOCATES.....PLAINTIFF/APPL**

**VERSUS**

**KENYA MARINE AND FISHERIES.....DEFENDANT/RESP**

**RESEARCH INSTITUTE.....2<sup>ND</sup> DEFENDANT/RESP**

**RULING**

This is a ruling on the Advocate's application dated 28<sup>th</sup> August 2018. It seeks entry of judgment for the Applicant against the Respondent for Kenya shillings Nine Hundred and Eighty seven Three Hundred and Twenty Shillings (987,320) plus interest at Courts rate from 29<sup>th</sup> June 2017.

Grounds On the face Of the Application are that the Taxing Master delivered a ruling on Advocate/Client Bill of Costs for Kenya shillings Nine Hundred and Eighty Seven Three Hundred and Twenty Shillings (987,320) on 16<sup>th</sup> June 2017.

That Certificate of Costs was issued on 29<sup>th</sup> June 2017 which the Respondent has failed to satisfy the Certificate of Costs.

The application is supported by affidavit sworn by Lucy Nyamoita Momanyi Advocate. She restated grounds on the face of the application.

Counsel averred that the Respondent was served with Certificate of Costs on 3<sup>rd</sup> July 2017 but to date the Advocates fee has not been paid.

The Respondent filed grounds of opposition dated 21<sup>st</sup> September 2018 and filed on 22<sup>nd</sup> September 2018.

In response the Respondent indicated that it lodged appeal against the ruling delivered by this Court on 30<sup>th</sup> May 2018.

That the hearing of this application is miscarriage of justice as the Respondent will be denied the right to appeal.

On perusal of the file, I have not seen copy of Memorandum of Appeal. There is also no stay order either from this Court or from Court of Appeal.

In the application dated 10<sup>th</sup> July 2017, the Respondent sought leave to lodge objection to ruling delivered by the taxing master on 16<sup>th</sup> June 2017.

The Court dismissed the application by ruling delivered on 30<sup>th</sup> May 2017. On the said date, the Respondent sought and granted leave to appeal against the ruling.

The Respondent has not demonstrated to Court that appeal was filed; neither has the Respondent sought stay pending appeal.

Upon issuance of Certificate of Costs, a party awarded cost is required to make an application under Section 51(2) of Advocates Act for entry of judgment as per the certified costs.

What can stay the process of seeking judgment for certified costs is a reference if filed by aggrieved party. The Respondent filed no reference within stipulated period. No appeal against ruling on extension of time has been filed nor stay order obtained.

There is no reason to preclude the Court from entering judgment for the Applicant to allow Applicant pursue payment of costs awarded.

**Final Order**

1. Judgment is hereby entered for the Plaintiff against the defendant for sum of Kenya Shillings Nine Hundred and Eighty Seven Thousand, Three Hundred and Twenty Shillings only (987,320.00)

2. Interest on order 1 above at Courts rate from 29<sup>th</sup> June 2017.

**Ruling Delivered, Dated and Signed at Nairobi this 19<sup>th</sup> day of November, 2018**

.....

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF**

Jasmine: **COURT ASSISTANT**

Ms. Lucy Momanyi: **COUNSEL FOR ADVOCATE/APPLICANT**

Mr. Alex Kadimo: **COUNSEL FOR CLIENT/RESPONDENT**