



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM; CHERERE-J)

MISC. CIVIL APPLICATION NO 61 of 2017

BETWEEN

MOSES M. OMONDI & JAMES .O.ABADE t/a

ABANDE & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

AND

KASSIM WERE ABDALLA.....RESPONDENT/CLIENT

JUDGMENT

1. By a notice of motion dated 24.4.18, brought under Section 51(2) of the Advocates Act Cap 16 Laws of Kenya and Rule 7 of the Advocates Remuneration Order and Section 3A of the Civil Procedure Act; the applicant prays for orders:-

a) THAT the applicant's Bill of Costs taxed at Kshs. 400,000/- in KISUMU CMCC 320 OF 2016 BLUE SANDS HOTEL LIMITED VERSUS KASSIM WERE ABDALLA & 5 OTHERS AND KASSIM SHABAN OPIYO & 2 OTHERS be deemed judgment of this Honourable Court

b) THAT interest on taxed costs be awarded from 16th January, 2018

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of James .O.Abade, Advocate of the High Court of Kenya, sworn on 24th April, 2018. He avers that on instructions from the client, the applicant acted for the client in **KISUMU CMCC 320 OF 2016 BLUE SANDS HOTEL LIMITED VERSUS KASSIM WERE ABDALLA & 5 OTHERS AND KASSIM SHABAN OPIYO & 2 OTHERS**. He avers that the bill of costs in respect of services rendered was taxed for the sum of **Kshs. 400,000/-** and a certificate of taxation was issued for the said sum on 16th January, 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 19.11.18, the respondent's counsel though served did not appear.

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 12th June, 2018 when the respondent’s counsel entered appearance as the date of service of the Bill. Thirty (30) days expired on 12th July, 2018.

8. The upshot of this is that the notice of motion dated 24.4.18 succeeds and is allowed in the following terms:

- a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 400,000/-***
- b) Interest shall accrue on the taxed costs at 14% per annum from 12.7.18 until payment in full***
- c) The Advocate will also have the costs of this application.***

DATED AND SIGNED IN KISUMU THIS 22nd DAY OF November 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For the Applicant /Advocate - Ms. Barasa/Mr Abonde

For the Respondent/Client - N/A