



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO 174 OF 2017

HEZRON ABOK t/a ABOK

ODHIAMBO & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

PETER ROESER -OTT.....RESPONDENT/CLIENT

JUDGMENT

1. By a notice of motion dated 21.9.18, brought under section 51(2) of the Advocates Act and paragraph 7 of the Advocates Remuneration Order and all enabling provisions of the law; the applicant prays for orders:-

1. That the Honourable Court be pleased to order that the certificate of costs dated 17th May, 2018 and issued on 30th May, 2018 be deemed to be the decree of this court for the sum taxed and of Kshs. 489,175.46 in respect of the amount stated in the certificate of costs

2. THAT interest does accrue on the aggregate of costs at 14% per annum w.e.f 31st August, 2017

3. Costs of the application

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of Hezron Abok Ohiambo Advocate of the High Court of Kenya, sworn on 21st September, 2018. He avers that on instructions from the client, he acted for the respondent in **KISUMU ELRC CAUSE NUMBER 365 OF 2015**. He also avers that the bill of costs in respect of services rendered was taxed for the sum of **Kshs. 489,175.46** and a certificate of taxation dated 17th May, 2018 was issued on 30th May, 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 13.11.18, the respondent, although served did not attend court and the application is therefore unopposed.

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. The bill of costs was served on 30.8.17 and thirty (30) days therefore expired on 30.9.17.

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. 489,175.46

b) Interest shall accrue on the taxed costs at 14% per annum from 30.9.17 until payment in full

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

DATED AND SIGNED IN KISUMU THIS 6TH DAY OF December 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