

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS APPLICATION CAUSE NO. 47 OF 2016

CICILIO MURANGO MWENDA

T/A MURANGO MWENDA & CO. ADVOCATES PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF ISIOLO DEFENDANT

JUDGMENT

1. Before me is a Motion on Notice dated 17th November, 2016 taken out by Cicilio Murango Mwenda t/a Murango Mwenda & Co. Advocates (hereinafter “the Applicant”). The same is brought under Section 52 (2) of the Advocates Act and seeks judgment against Isiolo County Government (“The Respondent”) for KShs.2,149,975/= in terms of a Certificate of Taxation dated 22nd September, 2016.

2. The Motion is supported by the Affidavit of Cicilio Murango Mwenda sworn on 21st November, 2016. The grounds for the Motion are that the Applicant is an Advocate of this Court who had filed a bill of costs dated 31st May, 2016 against the Respondent; that the said bill of costs was taxed on 15th September, 2016 in his favour at KShs.2,149,975/=. A Certificate of Costs was subsequently issued on 22nd September, 2016 in respect thereof which was duly sent to the Respondent. The said certificate of costs has neither been set aside nor altered. That despite as aforesaid, the Respondent has not settled the sum certified or any sum at all. The Applicant therefore prays for judgment in terms of the said certificate of costs. The Applicant did file submissions and relied on the cases of *Kithi & Company Advocates v Menengai Downs Ltd [2015] eKLR* and *Nderitu & Partners Advocates v Mamuka Valuers (Management) Ltd [2006] e KLR* which I have carefully considered.

3. Section 51 (2) of the Advocates Act provides:-

“(2)The certificate of the taxing officer by whom any bill has been taxed shall unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

4. It would seem that from the said provision, all that an Advocate has to show is that there is a bill of costs which has been taxed and a certificate of costs issued in respect thereof; that the said certificate has not been altered or set aside by the court and that there is no dispute as to retainer. On proving the foregoing, an Advocate is entitled to judgment on the amount contained in the certificate plus costs.

5. In the present case, I have seen a Bill of Costs dated 31st May, 2016. The same was taxed at KShs.2,149,975/= and a certificate of costs in respect thereof issued by the taxing master on 22nd September, 2016. Vide a letter dated 30th September, 2016, the Advocate sent a copy of the said certificate of costs to Ms. Okubasu & Munene Advocates for the Respondent and demanded settlement of the amount certified. In his supporting Affidavit sworn on 21st November, 2016, Cicilio Murango swore that not only had the said certificate not been altered or set aside by the court, but that no payment in respect thereof had been received.

6. As held in the cases of *Kithi and Company Advocates v Menengai Downs Limited (Supra)* and

Nderitu & Partners Advocates v Mamuka Valuers (Management) Ltd (Supra), if there is no dispute as to retainer, once an Advocate proves that costs had been certified and the certificate remained unaltered or was yet set to be aside, the Advocate is entitled to judgment. In the present case, the certificate of costs remains intact and unaltered. There is nothing on record to show that retainer is disputed. To the contrary, there is on record a letter from the Defendant dated 21st May, 2015 instructing the Advocate to proceed acting for it. The averments of the Advocate in his Supporting Affidavit remain uncontroverted.

7. In the circumstances, the Advocate has proved that he is entitled to judgment on the amount certified in the Certificate of Costs dated 22nd September, 2016. Accordingly, the application is allowed. Judgment is hereby entered for the Applicant against the Respondent for KShs. 2,149,975/=. In terms of **Rule 7 of the Advocates Remuneration Order**, I award interest on the decretal sum at the rate of 14% per annum. On record is a letter dated 29th March, 2016 delivering to the Respondent a block bill. Under **Rule 7 of the Advocates Rules**, the rate of 14% interest applies to the decretal sum 30 days from the date of service of the block bill. In this regard, decretal sum shall attract interest from 29th April, 2016 until payment in full. The Advocate shall also have the costs of the suit.

It is so decreed.

DATED AND DELIVERED AT MERU THIS 15TH DAY OF MARCH, 2017.

ALFRED MABEYA

JUDGE