



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. APP.155 OF 2016

MATIRI MBURU & CHEPKEMBOI.....APPLICANTS

-VERSUS-

INVESCO ASSURANCE CO. LTD.....RESPONDENT

RULING

1. The application before me was filed by Matiri Mburu and Chepkemboi advocates. It seeks orders that that the certificate of costs dated 14th October 2016 be adopted as judgment of the court and that costs of the application be provided for. It is based on the grounds that:

- i. The applicant's bill of costs dated 14th April 2016 was taxed at Kshs.55,000 by the Deputy Registrar on 12th October 2016.*
- ii. The respondent is in a financial crisis and might go down with the respondent's legal fees.*
- iii. This application is not in any way prejudicial to the respondent.*
- iv. It is in the interest of justice that this application is allowed*
- v. The applicant is likely to suffer irreparable loss if this application is not allowed.*

2. The application is supported by the affidavit of Njuguna Matiri who deposes that the applicant filed a bill of costs dated 14th April 2016 against the respondent and that the said bill was taxed at Kshs.55,000 by the Deputy Registrar, Nakuru on 12th October 2016. He deposes further that the applicant subsequently filed and served the certificate of costs dated 14th October 2016. That the respondent was in financial crisis and might go down without paying the applicant legal fees.

3. The respondent did not attend court at the hearing of the application on 6/6/2017. **Ms. Matiri** for the applicant informed the court that the respondents were duly served with the certificate of costs and the hearing notice and had filed an affidavit of service to that effect. She prayed to be heard on the application.

4. I allowed the applicants to proceed ex parte upon being satisfied that the respondents were duly served.

5. Ms. Matiri totally relied on the averments on the supporting affidavit to urge the application. She prayed that the same be allowed as it was unopposed.

6. I have considered the application. It is brought under Section 51 (2) of the Advocates Act which states:-

“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.”

7. I have also perused the file. I note that there is no reference filed by the respondent challenging the taxation and certificate of costs. None has been brought to my attention either and no opposition was filed in respect of the present application.

8. In the premises, I allow the application dated 9th November, 2016 and order that the certificate of costs dated 14th October, 2016 be and is hereby adopted as judgment of the court.

Ruling delivered, dated and signed this...15th day of June 2017

R. LAGAT KORIR

JUDGE

In the presence of:

C/A Emojong

..... for applicants

.....for respondent