



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISC. APPLICATION CASE NO. 217 OF 2016

MUTHAURA MUGAMBI AYUGI &

NJONJO ADVOCATES.....APPLICANT

VERSUS

QUEST LABORATORIES LIMITED.....RESPONDENT

RULING

1. This ruling relates to a Notice of Motion dated 15th November 2016 brought under the provisions of Section 51(2) of the Advocates Act, Order 51(1) of the Civil Procedure Rules, 2010 and Section 1A, 1B and 3A of the Civil Procedure Act, and any other enabling provision of the law. The Application is supported by the grounds on the face of it and the Affidavit sworn by Angela C. Cherono dated 15th November 2016.

2. The Applicant is seeking for orders that:

- ***This Honourable Court be pleased to enter judgement as against the Respondent for the certified amount of Kshs.262,855.62 in terms of the Certificate of Taxation herein dated 12th October 2016.***
- ***That the said sum of Kshs.262,855.62 be paid with interest at the rate of 14% per annum from 27th April 2016, that is the date of filing the Bill of Costs herein, until payment in full.***
- ***That pursuant to the entry of judgement, hereinabove, a Decree be issued.***
- ***That the costs of this Application be provided for.***

3. The brief facts are that the Respondent instructed the Applicant to represent them in Milimani CMCC No. 2177 of 2008 (Yara East Africa Limited Vs Quest Laboratories Limited) and of which the Applicant diligently acted for the Respondent as required. It was agreed between the Applicant and the Respondent that the fees for rendering such representation shall be paid to the Applicant and which fees has never been settled. Subsequently the Applicant filed an Advocate-Client Bill of Costs herein on 27th April 2016 seeking a sum of Kshs.369,395.84 as legal fees for above services rendered to the Respondent. On 21st September 2016 the said Bill of Costs was taxed at an all-inclusive sum of Kshs.262,855.42 in favour of the Applicant. Thereafter, a Certificate of Taxation was issued on 12th October 2016. The said Certificate of Taxation has never been set aside or altered. As Respondent has failed and/or neglected to pay the said costs despite several reminders. In the circumstances, it is only fair that, the Application be allowed.

4. The Application was served on the Respondent herein on 2nd December 2016 along Baricho Road, Plessey House where the Respondent Offices are situated. The same was handed over to one of the company Directors known as Mr. Fredrick Muthuri, who accepted service and returned the stamped copies thereof. The evidence of service is based on the Affidavit of Service dated 7th February 2017, sworn and filed by Moses Wambua, a process server. On the 13th February 2017 when the matter was before Court, Mr. Mungalo holding brief for Mr. Kabue appeared for the Respondent Company. However, when challenged on his representation, the lawyer threw in the towel and told the Court, he had no instructions. The Applicant's lawyer informed the Court that, they had served the Respondent personally. The Court ordered the Respondent be served again. It is not quite evident whether the 2nd service was effected.

5. Be it as it were, on 24th February 2017 the Applicant filed their written submissions. The Respondents have therefore not participated in the hearing of this Application. I have considered the Applicant's submissions and I find that, the claim herein arises from professional fees the Applicant is claiming from the Respondents.

6. The Applicant submitted that, they represented the Respondent in a case, Milimani CMCC No. 2177 of 2008, Yara East Africa Limited Vs Quest Laboratories Limited. The fees remain unsettled to date. Following the Advocate-Client Bill of Costs taxation, a sum of Kshs.262,855.42 was awarded to the Applicant as legal fees. A Certificate of Taxation is evidence thereof. The same has not been set aside and/or altered, as per the provisions of Section 51(2) of the Advocates Act, Cap 16, Laws of Kenya. As regards, interest claimed on the sum awarded; the Applicant relies on paragraph 7 of the Advocates (Remuneration) Order, which allows an Advocate to charge interest rate up to 14% per annum, on his disbursements and costs.

7. I therefore find that, as the Application is unopposed and is fully supported, the same is merited. I allow it in the terms of prayers 1, 2, 4. The issue of decree is an automatic process of law, and does not need a court order.

8. Those then are the orders of the Court.

Dated, delivered and signed in an open Court on this 5th day of June 2017 at Nairobi

GRACE L. NZIOKA

JUDGE

In the presence of

Mr. Mureithi for Ms. Cheronon for the Applicant

No appearance for the Respondent

Teresia – Court Assistant.