



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**MISCELLANEOUS APPLICATION NO. 121 OF 2014**

**MURI MWANIKI & WAMITI ADVOCATES....APP/ADVOCATES**

**VERSUS**

**AFRICA MERCHANT ASSURANCE**

**COMPANY LTD.....RESPONDENT/CLIENT**

**RULING**

The applicant, which is a firm of advocates, moved this Honourable Court through a Notice of Motion dated 29<sup>th</sup> September, 2015 in which it sought orders for judgment to be entered, apparently against the respondent, for the sum of Kshs 64,187.00 in costs certified by the Deputy Registrar on 24<sup>th</sup> September, 2014. The applicant also sought for interest on the sum of Kshs 64, 187.00 at the rate of 14 % per annum from the date of filing its bill of costs until payment in full and also asked for the costs of the application.

The application was supported by the affidavit of Martin G Mwaniki who trades in the name and style of the applicant as an advocate of the High Court of Kenya. In that affidavit, counsel deposed that he acted for the respondent in **Nyeri Chief Magistrates Court Civil Case No. 298 of 2009, Catherine Mumbi Waithaka versus Peter Maina King'ori**. His bill of costs for representing the respondent was taxed at Kshs 164, 187.00 out of which the respondent settled Kshs 100,000.00 leaving a balance of Kshs 64,187.00.

Counsel deposed that he would wish to commence execution proceedings against the respondent once the taxed costs have been endorsed as judgment of this Honourable Court.

Though the respondent was served with the application and the hearing notice, it neither filed any response to the application nor appeared when the application came up for hearing on 25<sup>th</sup> January, 2016; in its absence, the application proceeded *ex parte*.

**Section 51** of the Advocates which counsel has invoked in search for the orders expressed in the application provides as follows:-

***51. General provisions as to taxation***

***(1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.***

***(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.***

Of particular relevance to this application is subsection (2) of this section. The certificate of the taxing officer referred to in that subsection has been exhibited to the applicant's affidavit showing that indeed the advocate's bill was taxed at Kshs 164,187.00.

The applicant's contention that only Kshs 100,000/= has been paid and that the sum of Kshs 64, 187.00 is still outstanding has not been controverted. The applicant in my humble view has made out a case for an order for judgment to be entered for the sum certified to be due with costs. I will therefore allow the application as prayed. Orders accordingly.

**Signed, dated and delivered in open court this 11<sup>th</sup> March, 2016**

Ngaah Jairus

**JUDGE**