



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO. 552 OF 2007**

**MEREKA & COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**INVESCO ASSURANCE CO. LTD.....DEFENDANT**

**RULING**

1. The Applicant defended the Respondent in Kangema SRMCC No. 69 of 2007. The Applicant thereafter lodged a bill of costs which was taxed at KShs. 47,720.50 /=. The bill has not been settled by the Respondent occasioning the filing of the Applicant's Notice of Motion dated 28<sup>th</sup> October, 2014. The said under Section 51 (2) of the Advocates Act, Cap 16 (*'the Act'*) seeking that this court enters judgment for KShs. 47,720.50 /= in terms of the certificate of costs dated 30<sup>th</sup> January, 2008 together with interest at 14% from the said date and that pursuant to the judgment, a decree be issued for enforcement or execution.

2. The application is based on the grounds on the body of the application and the supporting affidavit of David Mukii Mereka sworn on 29<sup>th</sup> October, 2014. It was the Applicant's averment that following the taxation of the Applicant's bill of costs dated 20<sup>th</sup> August, 2007 at KShs. 47,720.50, the Applicant and the Respondent in a meeting held on 16<sup>th</sup> November, 2012 entered into an agreement on how outstanding fees would be paid by the Respondent. His gravamen is that despite the said agreement the Respondent has not furnished any payment. It was stated that the Respondent having not filed any reference to the taxation, it is just and fair that judgment be entered in terms of the certificate of costs issued on 30<sup>th</sup> January, 2008.

3. The Respondent was given leave to file a response to the application but failed to do so within the time frame allowed by this court. Subsequently, the Respondent was denied further indulgence and the motion was heard without the Respondent's reply to it.

4. At the hearing of the application, counsel for the Applicant relied on the grounds on the face of the application and the supporting affidavit therein.

5. I have considered the depositions and the submissions tendered by both parties. Section 51(2) of the Act provides as follows:-

***“The certificate of the taxing master 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 costs covered thereby...”***

In light of the above provision, this court can award interest from the date of entry of judgment pursuant to the certificate of costs envisaged in Section 51 (2) of the Act considering that a certificate of costs is

final and binding. Under Section 51(2) of the Act the Advocate is entitled to judgment in the sum certified to be due to them by the taxing officer as their costs against the Client so long as the conditions set out in that section are established. The conditions are that:-

- a. A certificate of the taxing officer by whom their bill was taxed has been raised;
- b. the said certificate has not been set aside or altered by the court; and
- c. the retainer is not disputed.

6. It is clear that the Respondent does not contend entry of judgment in terms of the certificate of costs and it has not been established that the certificate of costs has been set aside or varied rather the only issue in contention is that of interest. Prayer 1 of the application is thereby granted.

7. The pertinent issues remaining for this court's determination are:-

- a. *Whether, there was a retainer agreement between the Applicant and the Respondent;*
- b. *If (b) above is answered in the affirmative at what rate is it payable and from what date should it be calculated.*

8. The aforesaid issues were not rebutted. The failure to file a replying affidavit in contention of a fact amounts to an admission of facts on the Applicant's application as was the holding in the case of **Crown Berger Kenya Ltd v. Kalpech Vasuder Devan and Another Civil Case No. 246 of 2006 (UR)** quoted with approval in **Kennedy Otieno Odiyo & 12 others v. Kenya Electricity Generating Company Limited ( 2010) eKLR.**

9. Rule 7 of the Advocates (Remuneration) Order (*'the order'*) provides as follows:-

***“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.”***

10. It is clear from the aforesaid Rule that the advocate is entitled to charge interest at the rate of 14% p.a on disbursements and costs after the expiry of one month from the date of delivery of his bill to the client. In the end I find in favour of the advocate/applicant as prayed.

Dated, Signed and Delivered in open court this 8<sup>th</sup> day of May, 2015.

J. K. SERGON

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent