

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC MISCELLANEOUS APPLICATION NO. 47 OF 2018

AMBWERE T.S & ASSOCIATES.....APPLICANT

VERSUS

FRANK NYAMBU WAFUKWA & OTHERS.....RESPONDENTS

RULING

(Application for judgment to be entered in favour of an advocate against his clients after taxation of an advocate/client bill of costs; application not opposed; application allowed)

1. What is before me is an application dated 20 May 2020 filed by M/S Ambwere T.S & Associates Advocates seeking an order for judgment to be entered against the respondents for the sum of KShs. 970,175/= as stated in the Certificate of Costs dated 13 March 2020 with interest at 14% from the said date. The application is inter alia premised upon the provisions of Section 51 (2) of the Advocates Act, Cap 16, Laws of Kenya.

2. The background is that the applicant, a firm of advocates, represented the respondents in the suit Mombasa ELC No. 81 of 2016 (OS), wherein the respondents had sued for orders of adverse possession. Before the case was concluded, the respondents changed counsel, which prompted the applicant to file an Advocate-Client Bill of costs. The same was taxed at KShs. 500,000/=. Both applicant and respondents were aggrieved by the taxation and filed a reference to this court. I heard the reference and delivered my decision on 26 February 2020. I found that the applicant was entitled to professional fees in the sum of KShs. 889,500/= add VAT at 16% (KShs. 142,320/=) in total KShs. 1,031,820/=. I further found that the respondents had paid the applicant the sum of KShs. 235,000/=. I awarded a sum of KShs. 10,000/= to the applicant on the reference, and subject to provision of a receipt, a sum of KShs. 60,000/= which the applicant paid to have the subject matter of the dispute valued for purposes of assessing the fees payable.

3. On 13 March 2020, the parties appeared before the Deputy Registrar to reconcile the accounts, and by consent, arrived at the all inclusive figure of KShs. 970,175/=. It is this sum that the applicant wishes to have judgment entered for.

4. There is nothing filed to oppose the application, and on the date of the hearing of the motion, counsel for the respondents did not appear although duly served. I take it that the respondents have no issue to raise.

5. I have no reason not to enter judgment as prayed by the applicant. I will thus enter judgment for the applicant against the respondents jointly and/or severally for the sum of KShs. 970,175/=. The only issue is interest. Counsel did not avail to me why he is entitled to interest at 14%. Interest will therefore be at court rates from 26 February 2020 which is the date that the costs were taxed by this court. The applicant will also have the costs of this application.

6. Orders accordingly.

DATED AND DELIVERED THIS 11 DAY OF NOVEMBER 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA