



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

MISC. CIVIL APPLICATION NO. 38 OF 2019

J.M. MAKAU & COMPANY ADVOCATES....APPLICANT

VERSUS

1. JAMES MUTHUSI MAKAU

2. HAMISI A. MWASEREYE

3. EPHAS S. MUNYALA

4. GEOFFREY N. NGAO.....RESPONDENTS

5. BAILE FAMAU

6. SAMSON M. KIMULI

7. JARIM ONDEGO

R U L I N G

1. Vide a Ruling shown to have been delivered on 27th August 2021, this Court's Deputy Registrar, Honourable Lesootia Saitabau - Principal Magistrate, taxed the Advocate Applicant's Advocate/Client Bill of Costs dated 28/9/2019 at Ksh.2,472,295.00. A certificate of costs subsequently issued on 16th September 2021.

2. On 23rd September 2021, the Advocate/Applicant (**hereinafter referred to as the Applicant**) filed the Notice of Motion dated 21st September 2021 seeking the following orders:-

a) that the Certificate of Costs dated 16th day of September 2021 for the amount of ksh.2,472,295.00 be deemed as a decree of this Honourable Court.

b) that interest of 14% do accrue from the date of the Certificate of Costs till payment in full.

c) that costs of the application be provided for.

3. The application is expressed to be brought under Sections 1A, 1B, 3A and 80 of the Civil Procedure Act, Section 51(2) of the Advocates Act and all other enabling provisions of the law; and is shown to be grounded on the Supporting Affidavit of **John Muneeni Makau Advocate** sworn on 21st September 2021 and filed with the application. A copy of the Certificate of Costs referred to in paragraph 1 of this Ruling is annexed to the said affidavit.

4. An Affidavit of Service sworn by one Alex Nzuki (a Court process Server) on 7th October 2021 and filed in this Court on 13th October 2021 states that the said Notice of Motion, scheduled for hearing on 14th October 2021, was served on the Respondent's Advocates on 23rd September 2021. A copy of the served application, endorsed with the date of its scheduled hearing, was filed together with the said Affidavit of Service.

5. On 14th October 2021, neither the Respondents nor their counsel on record appeared for hearing of the application, and no response thereto

had been filed. Mr. Makau Advocate urged the Court to allow the application as prayed.

6. Section 51(2) of the Advocates Act provides:-

“the Certificate of a 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 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. The taxing officer’s Certificate dated 27th August 2021 has neither been altered nor set aside by this Court, and has not been shown to be the subject of any dispute.

8. Consequently, judgment is hereby entered in the sum of ksh.2,472,295.00 being the applicant’s costs certified by the taxing officer vide the Certificate of Costs dated 27th August 2021 and issued on 16th September 2021.

9. Interest on the decreed sum shall be at court rates, and shall be calculated from the date of this Ruling until payment in full.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 11TH DAY OF NOVEMBER 2021.

AGNES M.K. NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams

Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES M.K. NZEI

JUDGE

Appearance:

Mr. Makau for Applicant

No appearance Respondents