



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO.38 OF 2016

MUTHAURA MUGAMBI AYUGI &

NJONJO ADVOCATES.....APPLICANT

VERSUS

QUEST LABORATORIES LIMITED.....RESPONDENT

RULING

The Applicant through Notice of Motion filed under the provisions of section 51(2) of the Advocates Act, Order 51(1) of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act and is seeking for orders that;

- 1. The court be pleased to enter judgement as against the Respondent for certified amount of Kshs.159, 544.02 on the Certificate of Taxation herein dated 11th October, 2016.*
- 2. The said sum of Kshs.159, 544.02 be paid with interest at the rate of 14% per annum from 23rd March, 2016 which is the date of filing the Bill of Costs herein, until payment in full.*
- 3. Pursuant to the entry of judgement hereinabove, a Decree be issued,*
- 4. The costs of this application be provided for.*

The application is supported by the **Supporting Affidavit of Edel Ouma**, Counsel for the Applicant and on the grounds that the Applicant filed a Bill of Costs on 23rd March, 2016 seeking the sum of Kshs.159, 544.02 in a bid to recover its legal fees for services rendered to the client and Respondent herein in **Cause No.38 of 2014** before the **Employment and Labour Relations Court, Nairobi – Pramillah Asena Ayuma versus Quest Laboratories Limited**. On 24th August, 2016 the Bill of Costs was taxed and an all-inclusive sum of Kshs.159, 544.02 awarded to the applicant.

The Respondent has not challenged the Certificate of Taxation and has failed to pay the costs despite several reminders and only fair that the orders sought be issued as prayed.

The Applicant counsel made oral submissions in court.

The Respondent though served and Affidavit of Service filed opted to remain absent and never filed any reply or attend at the hearing.

Determination

In an application for the taxation of the bill of costs which is approved and is not challenged, set aside or altered, section 51 of the Advocates Act requires that the court to issue an Applicant with judgement for the sum certified stated as due in the Certificate of Costs. See **Daly & Figgis Advocates versus Homelex Limited (2013) eKLR** where in reference to section 51(2) of the Advocates Act the court held that;

... Section 51 (2) of the Advocates Act ... the words of the said section were very clear that where a Certificate of Taxation had neither been set aside nor altered by the Court, and where there was no order of stay, the Certificate was final as to the amount of costs covered thereby and to allege a dispute at summary Judgement stage would amount to a contradiction of express and mandatory statutory provisions

Therefore, once the Applicant went through the motions of having the Bill of Costs taxed and the Deputy Registrar issued a Certificate of costs and the Respondent has not moved to challenge the same or oppose this application, the court must issue judgement on the certified amounts and in terms of the Certificate issued and dated 11th October, 2016.

The Applicant is also seeking for interest to be paid on the judgement sum of at 14% per annum from the date the Bill of Costs was taxed that is 23rd March, 2016. Indeed upon the Entry of judgment herein, section 12 of the Employment and Labour Relations Court Act read together with the Advocates Act remuneration rules allow. As submitted by the Applicant, in the case of **Lubulellah & Associates Advocates versus N K Brothers Limited [2014] eKLR**, the court awarded costs and interest from the date of the taxation of due costs to advocate.

Accordingly, on the applicant's application dated 1st February, 2017 the grounds thereto and submissions on the applicable law and case law, the Respondent having failed to challenge the same, I find the merit and make orders as follows;

- (a) Judgement is hereby entered for the Applicant against the Respondent for the sum of Kshs.159,544.02 in accordance with the Certificate of Costs;**
- (b) The sum of Kshs.159,544.02 shall be paid with interest at 14% per annum from 23rd March, 2016 until paid in full;**
- (c) A decree shall issue as set out above; and**
- (d) The Respondent will bear the costs of this application.**

Dated and delivered in open court at Nairobi this 8th day of June, 2017.

M. MBARU

JUDGE

In the presence of:

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