



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT**

**NAIROBI**

**MISC. NO.55 OF 2015**

**MOHAMED & SAMNAKAY ..... APPLICANT/ADVOCATE**

**AND**

**CHOPSTIX LIMITED ..... RESPONDENT/CLIENT**

**AND**

**IN ELRC NO.311 OF 2012**

**ELIJAH KITONGA KAASYA VERSUS CHOPSTIX CHINESE RESTAURANT**

**RULING**

The applicant by notice of Motion dated 25<sup>th</sup> April, 2016 is seeking for orders that judgement be entered for the sum of Kshs.299,857.00 for costs certified on 30<sup>th</sup> March, 2016 and such judgement be entered with interest at 14% per annum from 7<sup>th</sup> August, 2015 one months after service of the Bill of Costs on the respondent. The application is supported by the affidavit of SJ Saenyio, advocate for the applicant.

The client and respondent filed Grounds of Opposition to the application on the grounds that the claimed amounts of Kshs.299,587.00 are not reflective of actual amounts which ought to be paid as on 3<sup>rd</sup> February, 2016 the client paid Kshs.50,000.00 towards partial settlement of the charges due and ought to be put into account.

Both parties made oral submissions.

In an application for the taxation of the bill of costs which is approved and is not challenged, set aside of 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*

The Deputy Registrar herein certified costs due on 30<sup>th</sup> March, 2016 upon judgement delivered on 7<sup>th</sup>

August, 2015. The respondent client asserts that on 3<sup>rd</sup> February, 2016 there was a payment of Kshs.50,000.00 tot eh advocate as part of the charges.

Where the Bill of Costs was taxed on 30<sup>th</sup> March, 2016 this was a date after the alleged payment of Kshs.50,000.00. in any event the respondent opted to filed Grounds of Opposition and not an affidavit setting out how and the purpose of the alleged payment of Kshs.50,000.00. such are matters which ought to have been addressed in a Replying Affidavit as to filed Grounds of Opposition is to deny the applicant the chance to interrogate the nature of matters addressed in the grounds of Opposition and which essentially are facts which should and ought to go into an affidavit as matters of fact.

**I find no material sufficient challenging the application by the applicant. The application dated 25<sup>th</sup> April, 2016 is hereby allowed with costs. Judgement is hereby entered for the sum of Kshs.299,857.00 to be paid with interest from 7<sup>th</sup> August, 2015 and costs herein.**

**Delivered in open court at Nairobi this 26<sup>th</sup> day of September, 2017.**

**M. MBARU JUDGE**

In the presence of:

David Muturi and Nancy Bor – Court Assistants

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