



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**CAUSE NO. 58 OF 2014**

*(Before Hon. Lady Justice Maureen Onyango)*

**ISSA JOHN MUSUNGU .....CLAIMANT**

**-Versus-**

**TEACHERS SERVICE COMMISSION .....RESPONDENT**

**R U L I N G**

Before me is an application filed by the Respondent Teachers Service Commission seeking the following orders:-

1. THAT the applicants costs taxed at Kshs.159,901/- on 24th July, 2015 be deemed Judgement of this Honourable Court.
2. THAT upon grant of prayer (1) above, interest to accrue on the taxed costs at the Court rates with effect from 24th July, 2015.
3. THAT the costs of this application be provided for.

The application is filed under section 6 of the Advocates Act and Section 3A of the Civil Procedure Act. It is supported by the affidavit of **Cavin Anyuor** sworn on 28th April, 2016 and on grounds that the applicant's costs were taxed on 24th July, 2015 yet remain unpaid to date, that the costs are not disputed and that the application is made in good faith and in the interest of justice and in order to avoid multiplicity of actions.

In the supporting affidavit Cavin Anyuor depones that he is an advocate of the High Court of Kenya practising as such for the Teachers Service Commission and has the personal conduct of the case, that the costs in this case were taxed in the sum of Kshs.159,901 and the same have not been reviewed, varied, appealed or set aside.

The Claimant was served through his counsel M/S D.C. Chitwah & Company Advocates on 18th June, 2016 but did not respond to the application.

The application was argued by Ms. Mambo on 21st July, 2016. She reiterated the contents of the supporting affidavit and urged the court to grant the orders sought.

During the hearing, having noted from the supporting affidavit of Cavin Anyuor that he is employed by the Applicant, the court asked Ms. Mambo who will receive the costs should the court order the Claimant to pay and she responded that payment would be made to Teachers Service Commission, the

Respondent/Applicant and employer of Cavin Anyuor who conducted the case as an in-house counsel.

The issue that I have to determine is therefore if I should order payment of costs under the **Advocates Remuneration Order of the Advocates Act** to Teachers Service Commission.

Rule 4 of the Advocates (practice) Rules provides as follows:-

*4. No advocate may agree to share with any person not being an advocate or other duly qualified legal Agent practising in another country his profit costs in respect of any business whether contentious or non-contentious:*

*Provided always that—*

*(i) an advocate carrying on practice on his own account may agree to pay an annuity or other sum out of profits to a retired partner or predecessor or the dependants or legal personal representative of a deceased partner or predecessor;*

*(ii) an advocate who has agreed in consideration of a salary to do the legal work of an employer who is not an advocate may agree with such employer to set off his profit costs received in respect of contentious business from the opponents of such employer or the costs paid to him as the advocate for employer by third parties in respect of non-contentious business against—*

*(a) the salary so paid or payable to him; and*

*(b) the reasonable office expenses incurred by such employer in connexion with such advocate (and to the extent of such salary and expenses).*

**4A.** *No advocate employed by an unqualified person shall draw documents or render other legal service to his employer for which fees are charged directly or indirectly by his employer to any other person and retained by that employer.*

Ordering the Claimant to pay fees to the Respondent, the Teachers Service Commission would be in breach of Rules 4, 5 and 6 of the Advocates (Practice) Rules in so far as the Teachers Service Commission is an unqualified person and Cavin Anyuor has not demonstrated that there is an agreement between him and the Respondent in terms of Rule 4(ii) of the Rules.

From the foregoing, the granting of the prayers sought by the Respondent in the application herein would lead to the contravention of the Advocates (Practice) Rules and amount to awarding costs to an unqualified person.

For these reasons the application is dismissed.

**Dated, Signed and Delivered this 29th day of September, 2016**

**MAUREEN ONYANGO**

**JUDGE**