



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**Misc Succ Appli 104 of 2004**

**OWINO OKEYO & CO. ADVOCATES.....PLAINTIFF**

**VERSUS**

**MARIAM SHARIFF SAGAAF.....1<sup>ST</sup> DEFENDANT**

**KHALID ABDALLA MOHAMMED.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Notice of Motions dated 16<sup>th</sup> July, 2007 has been filed by the Applicant/Advocate against the Client under Section 51(2) of the Advocates Act, Order L rule 1 of Civil Procedure Rules. It seeks judgment on taxed costs as found due by the Deputy Registrar on the 27<sup>th</sup> June 2007 and interest at 9% per annum from 23<sup>rd</sup> October, 2004 until payment in full with costs. Four reasons are given as grounds for the application. One that the costs have already been taxed in favour of the Advocate, two the certificate of taxation has been issued in the sum of Kshs.103,695/=, three that the taxation has not been altered, varied or set aside and four that this Honourable Court has jurisdiction to make the orders sought.

There is an affidavit sworn in support of the application, sworn by **STEPHEN OMONDI OWINO**, on behalf of the Advocate. The Advocate annexes the Certificate of Taxation marked “**SO1**” and depones that to his knowledge, the certificate has neither been challenged nor altered. He also depones that there is no dispute as to the retainer. The Advocate depones further that the sum has not been paid despite demand by the Advocate vide letter dated 4<sup>th</sup> July, 2007 and annexed as “**SO2**”.

I have considered this application. I note from the file that an application was heard ex-parte before the Deputy Registrar. The Client/Respondent according to the record sent a representative who did not participate in the proceedings as the Bill of Costs was unopposed.

The Taxing Master taxed the Bill at Kshs.103,695/= and thereafter issued a certificate to that effect.

There was no challenge concerning the retainer in the application before the Deputy Registrar. I find there is therefore no dispute as to the retainer.

The Advocate has, under Section 51(2) of the Advocate Act, to show

- a) that a bill of costs has been taxed and a certificate issued by the Taxing Master
- b) that the certificate has not been set aside, varied or stayed by a court and;
- c) that there is no dispute as to the retainer.

I do find that the Advocate/Applicant has satisfied all three requirements under the quoted section. A Certificate of Taxation is final as to the costs payable to the Advocate.

The Applicant deserved to be paid his costs. This application is merited. I do hereby allow it and enter judgment for the Advocate against the Client on the sum of Kshs.103,695/= with interest at 9% per annum from 23<sup>rd</sup> October, 2004 until payment in full and costs of the application.

**Dated at Nairobi this 30<sup>th</sup> day of November, 2007.**

**LESIT, J.**

JUDGE

Read, signed and delivered in the presence of:

Non attendance

**LESIT, J.**

JUDGE