



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. 190 OF 2019

MAINA & MAINA ADVOCATESAPPLICANT

VERSUS

JOSEPH MUNENE KARUBURESPONDENT

RULING

1. The firm of Maina & Maina Advocates, the Applicant has filed an application dated 23.8.21, seeking that judgment be entered in its favour against the Respondent Joseph Munene Karubu in the sum of Kshs. 104,724.00 being advocate/client costs as taxed on 12.5.2020 plus interest at 14% p. a. from 6.3.2020. The Applicant also seeks costs.

2. The Applicant stated that its bill of costs was taxed at the amount claimed and a certificate of taxation dated 24.9.2020 was issued. The said certificate of taxation has not been set aside or altered. Since the assessment, the Respondent has refused and/or neglected to settle the taxed sum together with interest. The Applicant has therefore moved this Court to enter judgment so as to enable the Applicant enforce payment.

3. The record shows that the Certificate of Costs was issued pursuant to the taxation of an Advocate/ Client bill of costs dated 22.11.19 for services rendered in Divorce Cause No. 84 of 2009 Catherine Wangui Munene v Joseph Munene Karubu. The bill of costs was served upon the Respondent on 10.2.2020, while the certificate of taxation was served upon the Respondent on 12.8.21. The Applicant contended that under Paragraph 7 of the Advocates Remuneration Order, an advocate is entitled to interest on costs at the rate of 14% from the expiry of 1 month from delivery of the bill upon the client.

4. The Application though served, was not responded to.

5. The jurisdiction of this Court to enter judgment for the sum certified to be due to an advocate upon taxation of a bill of costs is contained in the Advocates Act and the Advocates Remuneration Order. Section 51(2) of the Advocates Act provides as follows:

The certificate of the 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 the 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.

6. The certificate of taxation dated 24.9.2020 that was issued by the taxing officer in favour of the Applicant herein has neither been set aside nor altered by the Court. As per the foregoing provision, the certificate of costs is final as to the amount contained therein. Section 51(2) empowers the Court to make such order as it thinks fit, including an order that judgment be entered for the sum certified to be due with costs.

7. Further, Paragraph 7 of the Advocates Remuneration Order allows an advocate to charge interest on his costs and disbursements as follows:

An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.

8. The rate of interest which an advocate may charge is set at 14% per annum. This interest is chargeable from the expiration of 1 month from delivery by the advocate of the bill to his client. There is a rider however. The claim for interest must be raised before the amount of the bill is paid in full.

9. In the present case, there is an affidavit of service indicating that the Respondent was served with the notice of taxation and bill of costs on 7.2.2020. There is also evidence that the Respondent accepted service by signing the notice as well as every page of the said bill of costs. The Applicant is therefore entitled to charge interest from the expiration of one month from the delivery of his bill to the Respondent.

10. In view the foregoing, the Court finds that the Application dated 23.8.21 is merited. Judgment is hereby entered in favour of the Applicant as against the Respondent in the sum of Kshs. 104,724.00 as per the Certificate of Taxation dated 24.9.2020 together with interest at 14% per annum from 7.2.2020. The Applicant shall have costs.

DATED, SIGNED AND DELIVERED IN MOMBASA THIS 25TH DAY OF MARCH 2021

M. THANDE

JUDGE

In the presence of: -

..... **FOR THE APPLICANT**

..... **FOR THE RESPONDENT**

..... **COURT ASSISTANT**