



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. E1023 OF 2020

NDUATI & CO. ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

KENYA ORIENT INSURANCE COMPANY LIMITED..CLIENT RESPONDENT

J U D G M E N T

1. Before me is a Notice Motion dated 26/10/2020 brought under **Order 51, Rule 1 of the Civil Procedure Rules, Section 51(2) of the Advocates Act (CAP 16) and Order 7 of the Advocates (Remuneration) Order.**

2. In the Motion, the applicant has sought *inter alia*, consolidation of **HC Misc. Civ. Appln Nos. 936, 937, E984, E985, E036 and E039 and E935 of 2020.** As a consequent thereto, the applicant has sought that judgment be entered in his favor in terms of the Certificates of Taxation in all the aforesaid Miscellaneous Applications and in this one, all dated 9/10/2020 for the total sum of Ksh.993,644/-. The said sum constitute the aggregate of the total taxed bills. Interest thereon at 14% per annum from 1/8/2019 until payment in full is also prayed for.

3. The application was based on the grounds that; the applicant filed his bills of costs dated 04/02/2019, the same were taxed and Certificates of Taxation issued in respect thereof. That all the said taxations were drawn and paid for but due to technical issues in the e-filing portal, they had not been endorsed by the Deputy Registrar.

4. The said Certificates of Taxation total a sum of KShs. 993,644/= broken down as follows: -

a. Misc Application No. E1023/2020	-	Kshs. 180,787/-
b. Misc Application No. 936/2020	-	Kshs. 147,801/-
c. Misc Application No. 937/2020	-	Kshs. 62,185/-
d. HCCOMMISC E984/2020	-	Kshs. 145,525/70
e. HCCOMMISC E985/2020	-	Kshs. 97,614/80
f. HCCOMMISC E036/2020	-	Kshs. 147,083/-
g. HCCOMMISC E039/2020	-	Kshs. 141,863/-
h. HCCOMMISC E935/2020	-	Kshs. 70,784/-
Total	-	Kshs. 993,644/=

5. It was further contended that, the respondent had failed to pay the applicant's legal fees which had been duly earned by way of settling the aforesaid taxed costs. That the respondent was facing liquidity problems and that therefore, the recovery of the said fees was critical.

6. Despite being served, the respondent did not appear. The application was therefore unopposed.

7. I have considered the application and the deposition in the supporting affidavits. I have also considered the various Certificates of Taxation annexed to the affidavit in support.

8. Section 51(2) of the Advocates Act, Cap 16 Laws of Kenya provides: -

“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”. (Underlining mine)

9. On the other hand, *Order 7 of the Advocates (Remuneration) Order* provides that: -

“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.”

10. In Nyabena Alfred t/a Nyabena Nyakundi & Company Advocates v Tourism Promotion Limited t/a Serena hotel [2018] Eklr, the court held: -

“From the above provision, it is clear, and it is a rule of practice for advocates to file applications by way of notice of motion moving the court to enter judgment after taxation of their bills of costs and issuance of certificate of taxation. This procedure ensures expedition since the certificate of costs once issued is final as to the amount of the costs covered and what then remains is for the court to pronounce itself, on an application for judgment, where there is no dispute as to retainer, and order that judgment be entered for the sum of as per the certificate of costs”.

11. I fully agree with the aforesaid rendition. Once the taxing master issues a certificate of costs, there is nothing left. It is only for the Court to give judgment on the same where retainer is not in dispute. In the present case, there are a total of 8 certificates of costs. They emanate from bills of costs that have already been taxed. There is nothing on record to show that retainer is disputed. There is nothing to prevent judgment for the amounts in the certificates from being entered.

12. There was a prayer for the consolidation of the various Miscellaneous Applications. The parties are the same, the issues are the same. For expedition, this is a proper case for consolidation. It will go a long way in saving the Court, the precious judicial time which is scarce.

13. An advocate is entitled to charge interest at the rate of 14% per annum after the expiry of one month from the date of service of the bill upon the client. The service of the bill does not necessarily mean the bill of costs, but it is the formal demand of the costs that are due to an advocate. The applicant produced a letter dated 1/8/2019. Interest will therefore start to run 30 days after 1/8/2019, that is 1/9/2019.

14. In view of the foregoing, the Court finds that; the application was unopposed, the deposition in the supporting affidavit was not denied or controverted, the retainer was not disputed, the fees was properly demanded on 1/8/2019 and that the various applications can be conveniently disposed of upon consolidation with the present application.

15. Accordingly, I find that the application is meritorious and I allow the same and enter judgment for Kshs. 993,644/= with interest thereon at the rate of 14% from 1/9/2019 until payment in full.

It is so decreed.

DATED and DELIVERED at Nairobi this 11th day of February, 2021.

A. MABEYA, FCIArb

JUDGE