



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO. 204 OF 2018

OTIENO RAGOT & CO. ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

KENINDIA ASSURANCE CO. LTD.....RESPONDENT/CLIENT

RULING

The application dated 20th July 2020 is for the adoption of the Certificate of Costs as a judgment of the court, together with interest thereon at 14% per annum from 30th November 2017, until payment in full.

1. The Applicant also sought the costs of the application.
2. It is common ground that the Advocate/Client Bill of Costs was taxed on 27th June 2019, in the sum of Kshs 280,721/97.
3. However, on 27th February 2020, the parties set aside the Certificate of Costs in the sum of Kshs 280,721/97, and mutually agreed that the costs be in the sum of Kshs 200,000/=.
4. The Applicant indicated, on the face of its application that;

“(f) The Respondent has neither settled the said sum of Kshs 200,000.00 as taxed, nor paid any interest thereon which has accrued on the same.”

5. However, by the supplementary affidavit sworn by **JUDE RAGOT** Advocate, the Applicant stated that the Respondent had paid Kshs 200,000/= on 28th May 2020.
6. The Respondent submitted that the Applicant was not entitled to claim any interest on the taxed costs because the said costs had been paid in full before the application herein was filed in court.
7. The Respondent cited the provisions of **Rule 7** of the **Advocates Remuneration Order** to back its position: the said rule reads as follows;

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

8. According to the Respondent, the entitlement to charge interest would accrue when 30 days had lapsed after the advocate delivered a bill to his client, and if the client had not yet settled it.
9. The Applicant's position was that it was entitled to claim interest because it had delivered the Proforma Invoice to the client on 31st October 2017. Therefore, as the period of 30 days lapsed before the client had settled the Invoice, the Applicant submitted that it was entitled to interest from 30th November 2017.
10. By a letter dated 11th December 2019, which was annexed to the Supplementary Affidavit of Advocate Jude Ragot, the Applicant stated thus, in relation to **Rule 7** of the **Advocates Remuneration Rules**;

“The ‘bill’ as contemplated in that provision has been interpreted in several decisions of different courts to be the final

fee note served upon a client to settle, for purposes of determining the date of computation of interest.”

11. I hold the considered view that that statement is accurate.

12. In this case the advocate had not delivered the **FINAL FEE NOTE** to the Client on 31st October 2017. What the advocate delivered on that date was a **PROFORMA INVOICE**.

13. As I held in the case of **OTIENO RAGOT & CO. ADVOCATES Vs WINAM CHEMISTS LIMITED, MISC. CIVIL CASE NO. 54 OF 2019;**

“7. In so far as the document which was sent by the Applicant was a Proforma Invoice, it can be deemed to be an advance description of what the Applicant intended to charge.

8. A proforma invoice does not give rise to any legal obligations upon the person to whom it is addressed.

9. Secondly, the proforma invoice does not give rise to any legal obligations upon the person who sent it.

10. In contrast, an Invoice is deemed to be an asset for the person who sent it. Upon the basis of an invoice, the tax authority becomes entitled to demand payment of tax.

14. I therefore reiterate that although a Proforma Invoice may look like an invoice or a bill, it is not one.

15. In this case, the bill was sent by the advocate after the advocate and the client had entered into a consent, through which the costs was reduced from Kshs 280,721/97.

16. Accordingly, as the “Bill” was sent under the cover of the letter dated 11th December 2019, I find that the interest was payable on the costs from 10th January 2020.

DATED, SIGNED and DELIVERED at KISUMU This 21st day of April 2021

FRED A. OCHIENG

JUDGE