



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

MISC CIVIL APPLICATION No. 22 OF 2019

MOKAYA OGUTU & CO. ADVOCATES.....APPLICANT

VERSUS

AFRICAN MERCHANT ASSURANCE COMPANY.....RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 1st September, 2019 brought under Section 51 (2) of the Advocates Act Cap 16 of the Laws of Kenya, Rule 7 of the Advocates Remuneration Act order and Order 51 Rule 2 of the Civil Procedure Rules seeking orders as follows;

(1) That judgment be entered against the respondent/client in the sum of ksh 185,025

(2) That this Honourable court be pleased to award interest at 14% on the taxed amount from 11th day of November, 2019 up to the date of payment.

2. The application is predicated upon grounds set out on the face of it and an affidavit sworn on 19th November, 2019 by Kennedy O. Mokaya counsel practicing in the name and style of Mokaya Ogutu and Co. Advocates.

3. According to the applicant, they were duly instructed on 21st October 2015 by the respondent vide an instruction letter of even date (annexure KOM-1) to represent them in Taveta RMCC No 37/2015 Amina Mwikali Mbithi Vs Tom Mulwa Musyimi Monica and Benson M. Ndongye.

4. Upon entering appearance on behalf of the respondent and the case having been heard to conclusion, the respondent lost to the plaintiff. Subsequently, the applicant drew and served a fee note upon the respondent demanding their legal fees. Unfortunately, the respondent did not respond thus provoking the applicant to file a bill of costs on 1st August, 2019.

5. The said bill was taxed on 31st October 2019 at ksh 185,025 and a certificate thereof issued (see annexure KOM-2).

6. Even after having been served with the said certificate, the respondent opted to go silent thus necessitating the matter to get to this level for entry of judgment in favour of the applicant to the tune of the taxed amount plus 14 % per annum.

7. Although the application was served as well as the hearing notice, the respondent once again chose not to participate in these proceedings. During the hearing, Mr Ratemo holding brief for Mokaya for the applicant entirely relied on the content of the affidavit in support of the application. He further placed reliance on some three authorities attached for consideration.

8. I have considered the application herein and the affidavit in support together with materials in support thereof. There is no doubt that the application herein was not opposed. There is nothing challenging the fact that the applicant had represented the respondent in the aforementioned suit.

9. It is also a fact that the bill of costs was taxed at the sum indicated plus interest. Section 51(2) of the Advocates Act under which the application is made provides that;

“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”

10. Further, Rule 7 of the Advocates remuneration Order does provide as follows;

“An advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”.

11. From the record, it is clear that the respondent did not challenge the taxed bill of costs by way of a reference. The respondent did not seem to have followed any procedure in challenging the bill of costs as required in law. See **Muema Kitulu and company Advocates Vs Obadiah Kuvivya Nairobi Misc No. 149/2011** where the court held that the only recourse available for a party wishing to challenge a bill of costs was by filing a reference to the high court.

12. From the foregoing, the only option this court has legally, is to let the applicant enjoy the fruits of their sweat. Whereas a party in a suit has a right to be represented by a counsel of one's choice, it is equally a right to that counsel to be paid for the services rendered. It is only fair that this court does not impede the course of justice by denying counsel what is rightfully due to them.

13. Accordingly, it is my finding that the application is merited and therefore allowed with orders that judgment to the tune of Ksh 185,025 as per the certificate of taxation dated 4th November, 2019 is hereby entered in favour of the applicant. Further, interest at the rate of 14% is hereby awarded payable from 11th November until full payment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 16TH DAY OF APRIL, 2021

J. N. ONYIEGO

JUDGE