



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

MISC CIVIL APPLICATION NO. 25 OF 2019

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

VERSUS

AFRICAN MERCHANT ASSURANCE COMPANY.....RESPONDENT

RULING

1. Before me is a Notice of Motion dated 19th November, 2019 and filed on 20th November, 2019 pursuant to Section 51 (2) of the Advocates Act, Rule 7 of the Advocates Remunerating Order and Order 51 rule 1 of the Civil Procedure Rules 2010 seeking orders as follows;

(1) That judgment be entered against the respondent /client in the sum of ksh 162,275;

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

(3) That costs of this application and all incidental costs be provided for.

2. The application is anchored on grounds stated on the face of it and further amplified by averments contained in a supporting affidavit sworn on 19th November, 2019 by Kennedy O Mokaya an advocate practicing in the applicant's firm.

3. Briefly, the applicant's case emanates out of non-payment of legal fees arising from instructions given by the respondent vide a letter dated 11th June, 2014 (Marked KOM-1) seeking the applicant/ law firm to represent the defendant in Voi SPMCC No.77/2014 between Mercy **Umozi Ndegwa Vs Mustapha Jamal and Shaban Mwabeo Njai**. That having entered appearance and defence, the case was heard to its logical conclusion whereof judgment was entered in favour of the plaintiff.

4. Despite every effort made in demanding for payment of its due legal fee from the respondent, the respondent was adamant and or reluctant to pay. Subsequently, on 1st August, 2019 the applicant prepared a bill of costs for taxation. The same was taxed on 31st October, 2019 at Ksh 162,275 as evidenced by the attached taxation certificate marked Exhibit KOM-2

5. That it is on the basis of this certificate that the applicant is seeking entry of judgment plus 14% interest. Although the respondent was served with the application as well as the hearing notice, they did not bother to file any response nor appear during the hearing. The matter therefore proceeded ex parte. Mr Ratemo holding brief for Mokaya for the applicant purely relied on the averments contained in the affidavit in support of the application.

6. I have considered the application herein, affidavit in support and the averments thereof. From the record, there is sufficient evidence that the applicant's law firm was fully instructed to represent the defendant in the aforesaid civil case. Retainership is not challenged. It is also evident from the certificate that the bill of costs was taxed at Ksh 162,275.

7. This court is duty bound to enter judgment if satisfied that due process was followed and that there is prima facie evidence to justify entry of judgment. It is trite that even if an application is not opposed, the applicant must convince the court that it has a meritorious case capable of granting the orders sought. See **Gideon Sitolu Konchella Vs Julius Lakakeny Ole Sunkuli and 2 others (2018) e KLR** where the supreme court of Kenya held that **it is not automatic that for any unopposed application the court will as of matter of course grant the orders sought."**

8. In the instant case, the court has been moved under Section 51(2) of the Advocates Act which 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”

9. Further, the applicant had sought interest pursuant to rule 7 of the Advocates Remuneration order which states that;

“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”.

10. The duty of the applicant is to prove to the satisfaction of the court that they were instructed to render legal services and that they rendered such services but were not paid. The applicant has to the satisfaction of this court discharged that duty. Indeed, law firms do not render free services unless specifically stated as such. In order to remain relevant in practice, they must be paid to continue operating their offices and also earn a living.

11. The respondent has a responsibility to honour their part of the contract. This court cannot close its eyes not to grant the prayers sought in the obtaining circumstances of this case. The court is equally satisfied that under rule 7 of the Advocates Remuneration Order, the applicant is entitled to 14% interest. See **Nyaundi Tuiyot and Company Advocates Vs African Merchant Assurance Company Limited Misc Application No. 77/2017.**

12. Having found as above, it is my holding that the applicant is entitled to entry of judgment in their favour for the payment of Ksh 162,275 plus 14% calculated from 11th November 2019 until full payment.

Dated, signed and delivered virtually at Mombasa this 16th day of April,2021

J. N. ONYIEGO

JUDGE