



Mokaya Ogutu & Co Advocates v African Merchants Assurance Company (Miscellaneous Civil Application 20 of 2019) [2021] KEHC 9777 (KLR) (16 April 2021) (Ruling)

Neutral citation: [2021] KEHC 9777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION 20 OF 2019**

JN ONYIEGO, J

APRIL 16, 2021

BETWEEN

MOKAYA OGUTU & CO ADVOCATES APPLICANT

AND

AFRICAN MERCHANTS ASSURANCE COMPANY RESPONDENT

RULING

1. By a Notice of Motion dated November 19,2019, the applicant herein moved this court pursuant to section 51 (2) of the *Advocates Act* cap 16 of the Laws of Kenya, rule 7 of the Advocates Remuneration Order and order 51 rule 1 of the *Civil Procedure Rules* seeking orders as hereunder;
 1. That judgment be entered against the respondent/client in the sum of ksh 184,375
 2. That this honourable court be pleased to award interest at 14% on the taxed mount from November 11, 2019 up to the date of payment.
 3. That the costs of this application and all incidental costs be provided.
2. The application is predicated upon grounds stated on the face of it and averments contained in the affidavit in support sworn by Kennedy Mokaya counsel practicing in the name and style of Mokaya Ogutu and Company Advocates.
3. It is the applicant's case that on October 21,2015 his law firm was instructed by the respondent to enter appearance and defend the defendant in Taveta RMSCC case No 36/205 Mary Kambua Munyolo vs Tom Mulwa Musyimi, Kyama Monica and Benson Musyoka Ndonge. To prove the alleged instructions, an instruction letter marked annexure KOM -1 was attached. That the suit was heard to its logical conclusion in favour of the plaintiff
4. He averred that despite every effort made in demanding for payment of their legal fees for legal services rendered, the respondent was adamant and or neglected to respond.



5. Consequently, on August 1, 2019, the applicant prepared and filed a bill of costs against the respondent. The said bill was taxed at ksh 184,375 on October 31, 2019. A certificate to that effect was prepared and served upon the respondent. A copy of the said certificate was attached (annexture KOM-2). Besides, the applicant averred that its entitled to a 14% interest per annum from November 11, 2019.
6. Despite service of the bill of costs, the respondent did not bother to file any response. The matter therefore proceeded ex parte. Mr Ratemo holding brief for Mr Mokaya for the applicant basically relied on the content of the affidavit in support of the application and some filed authorities in respect of the case of Nyaundi Tuiyot and Company Advocates vs African Merchant Assurance company limited Nairobi Misc 77/2017 and Njonjo Okello & Associates vs Ketan Lalit Chindra Doshi and and Lalit Chandra Popetlal Doshi Nairobi Misc civil case No 841/2011 where both courts entered judgment in favour of the applicants based on taxed bill of costs which had not been challenged by way of a reference.
7. I have considered the application herein, the affidavit in support plus the authorities cited. There is no dispute that the applicants were duly instructed by the respondents to represent the defendants in the aforesaid civil suit. This was confirmed from the instruction letter marked KOM-1. Equally, there is no evidence that the bill of costs or the ruling arising therefrom has ever been challenged by way of refence to the High court.
8. The application herein draws its strength from 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, rule 7 of the Advocates Remuneration order also makes provision for interest at 14% per annum by stating 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 it raised before the amount of the bill has been paid or tendered in full” .
10. It is trite that an advocate’s law firm is business oriented and not a charitable organization. It has its operational and attendant costs in dispensing its duties. Unless *probono* services are rendered voluntarily by an advocate, he or she must earn a living, pay office rent, pay employees, procure stationery, besides meeting family obligations. All these needs depend on payment of legal fee. Having fulfilled their bargain in the contract, it is only fair that the respondent meets their part of the bargain as well by paying what is rightfully due to the applicants.
11. The application having not been opposed and the same having been proved to the required degree, I have no excuse but to allow the application and enter judgment in the sum of ksh 184,375 being the amount taxed plus interest at 14% with effect from November 11, 2019 until full payment.

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

J N ONYIEGO

JUDGE

