



REPUBLIC OF KENYA



Mokaya Ogutu & Co. Advocates v African Merchant Assurance Company (Miscellaneous Civil Application 21 of 2019) [2021] KEHC 9807 (KLR) (16 April 2021) (Ruling)

Neutral citation: [2021] KEHC 9807 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION 21 OF 2019**

JN ONYIEGO, J

APRIL 16, 2021

BETWEEN

MOKAYA OGUTU & CO. ADVOCATES APPLICANT

AND

AFRICAN MERCHANT ASSURANCE COMPANY RESPONDENT

RULING

1. Before me for determination is a notice of motion dated November 19, 2019 filed on November 20, 2019 pursuant to Section 51 of the Advocates Act Cap 16 Laws of Kenya, Rule 7 of the Advocates Remuneration Order and Order 51 Rule 1 of the Civil Procedure Rules seeking orders;
 - (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 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 based on grounds stated on the face of it and the content of the averments contained in the affidavit in support sworn on November 19, 2019 by Kennedy Mokaya an advocate practicing in the name and style of Mokaya Ogutu and company Advocates.
3. Briefly, the applicant was on October 21, 2015 instructed by the respondent vide a letter of even date instructing the applicant to represent the defendant in Taveta RMCC No 34/2015 Muslima Nuru Kalkacho Vs Tom Mulwa Musyimi Kyuma, Monica and Benson M Ndonge.
4. Having entered appearance and filed defence, the suit was heard to conclusion and a verdict made in favour of the plaintiff. That despite every effort made for the respondent to pay the requisite legal fee to the applicant for services rendered, the respondent was adamant and unwilling to settle. That it is this reluctance and or refusal that led to the filing of the suit herein.



5. Despite service of the application herein and the hearing notice thereof, the respondent did not bother to respond or appear. Consequently, the matter proceeded *ex parte*. During the hearing, Mr. Ratemo holding brief for Mokaya for the applicant purely relied on the content of the affidavit in support of the application and the attached list of authorities.
6. I have considered the application herein, affidavit in support and materials annexed thereof. As earlier stated, this application is not opposed. However, the fact that the application is not opposed does not automatically mean that it must succeed. See *Gedion Sitelu Konchellah Vs Julius Lakakeny Ole Julius and 2 others* (2018) e KLR where the court held that it is not automatic that for an unopposed application the court will as a matter of course grant the sought orders.
7. The application herein is anchored on Section 51 (2) of the *Advocates Act* 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”
8. Having looked at the taxed bill of costs, certificate drawn thereof, and considering that the application is not opposed, it is clear that the amount taxed has not been challenged or at all by way of a reference. I do not see any ground upon which this court can decline to enter judgment as prayed.
9. As regards interest, rule 7 of the Advocates remuneration Order is clear. It provides;

“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. The law is explicit on payment of interest. I do not have any good reason not to grant interest. The applicant rendered legal services under the respondent’s instructions. They cannot run away from their obligation. They are duty bound to pay interest as provided in the law.
11. In a nut shell, I am satisfied that the application is merited and the same is allowed as prayed. Accordingly, judgment is entered in favour of the applicant at Ksh 185,025 plus interest at 14% commencing from 11th November 2019 until full payment.

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

J. N. ONYIEGO

JUDGE

