



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 329 OF 2018

WAIGANJO WACHIRA & COMPANY ADVOCATES.....APPLICANT

-VERSUS-

TRIDENT INSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. Waiganjo Wachira & Company Advocates, the applicant herein, took out the Notice of Motion dated 13th October, 2020 and sought an order to the effect that judgment be entered for the taxed advocate-client costs of Kshs.137,395/= contained in the certificate of taxation dated 8th October, 2020 with interest thereon at the rate of 14% p.a. with effect from 4th October, 2018 until payment in full. The applicant also sought Z costs of the Motion.
2. The Motion is supported by the grounds set out on its face and the facts stated in the affidavit of advocate James Ichaura Wachira.
3. The respondent put in the replying affidavit sworn by its Legal Counsel, Eric Ntabo, to oppose the Motion.
4. At the hearing of the Motion, the parties opted to rely on their respective affidavit evidence.
5. I have considered the grounds set out on the face of the Motion, the facts deponed in the affidavits in support of and in opposition to the Motion.
6. It is clear that the Motion essentially seeks the entry of judgment in the manner indicated in the certificate of taxation dated 8th October, 2020.
7. In his affidavit, James Ichaura Wachira states that upon filing of an advocate-client Bill of Costs, the same was taxed on 8th May, 2020 and a certificate of taxation subsequently issued. That it is therefore imperative for judgment to be entered in favour of the applicant.
8. In reply, Eric Ntabo avers that the Motion is unfounded and lacks merit for the main reason that, the applicant has failed to produce a letter of instruction to support the costs sought in the Bill of Costs.
9. The record shows that vide the letter dated 15th December, 2014 the respondent gave instructions to the applicant to act for its insured (Sai Pack Limited) in Milimani CMCC NO. 5155 OF 2014 (Benjamin Kusumo Songola v Sai Pack Limited) by entering appearance, filing a statement of defence and essentially representing the interest of the insured in the suit, touching on negligence arising out of a road traffic accident.
10. It is clear from the record that the suit was settled by way of a consent recorded on 9th November, 2015.
11. It is also clear from the record that subsequently, the applicant filed an advocate-client Bill of Costs on 11th April, 2019 and that the same was taxed by Deputy Registrar L. A. Mumassabba on 8th May, 2020 in the sum of Kshs.137,395/= and a certificate of taxation was issued on 8th October, 2020.
12. Section 51(2) of the Advocates Act is clear that a certificate of taxation is final unless and until it is set aside or varied. The court in **Owino Okeyo & Company Advocates v Fuelex Kenya Limited [2005] eKLR** reaffirmed the above position when it held that:

“In my understanding of the provisions of Section 51 (2) of the Advocates Act, it enables an advocate to get judgment for the taxed costs...provided that his client did not dispute the fact that the advocate had been instructed (or retained) in the first instance.”

13. A similar reasoning was adopted by the court in the case of **Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR** in the following manner:

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment.”

14. From the foregoing, I observed that the respondent sought and was provided the legal services of the applicant at all material times. Furthermore, upon perusal of the taxation ruling, I note that the respondent was served with a copy of the Bill of Costs but did not file any documents in response thereto. More importantly, there is nothing to indicate that the certificate of taxation in this instance has been challenged, set aside or varied. In the premises, this court has no other business save to enter judgment pursuant to the certificate of taxation.

15. On the subject of interest, **Rule 7 of the Advocates (Remuneration) Order** provides 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.”

16. According to the affidavit of service on record dated 26th November, 2019, the advocate-client Bill of Costs was served upon the respondent on 19th November, 2019.

17. Going by the above provision, interest would start to accrue on 19th December, 2019 being one (1) month from the date of service/delivery of the Bill of Costs.

18. In the end, I allow the Motion on merit and make the following orders:

a) Judgment be and is hereby entered in favour of the applicant against the respondent for the taxed advocate-client costs of Kshs.137,395/= contained in the certificate of taxation dated 8th October, 2020 with interest thereon at the rate of 14% p.a. with effect from 19th December, 2019 until payment in full.

b) The applicant shall also have costs of the Motion.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MAY, 2021.

A. MBOGHOLI MSAGHA

JUDGE

In the presence of:

No appearance for the Applicant

Mr. Musundi for the Respondent