



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MISC. CAUSE NO. 108 OF 2012

IN THE MATTER OF THE ADVOCATES ACT

AND

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT

BETWEEN

CECIL MILLER T/A MILLER & CO. ADVOCATES.....APPLICANT

AND

PARIN SHARRIF.....1ST RESPONDENT

NAZLIN NIZAR JETHA.....2ND RESPONDENT

YASMIN JANMOHAMMED.....3RD RESPONDENT

ANAR HANALI.....4TH RESPONDENT

RULING

1. The Deputy Registrar taxed the applicant's bills of costs on 25th September 2014 at Kshs.18,759,474/= and Kshs.18,760,692/=, respectively. On 27th June 2019 the certificates issued on 31st May 2015 for the amount were entered as judgment of court. They were with interest at 14% from 1st May 2015 to the date of full payment. The respondents filed an application dated 25th July 2019 to review and set aside the judgment and decree to allow the hearing of their application dated 17th May 2015 to enlarge time within which to file and serve a reference against the taxation by the Deputy Registrar. The applicant filed an application dated 27th September 2019 to have the respondents to provide security for the decretal amount which had grown to Kshs.58,533,158/69. The court allowed the respondents' application on condition that they deposit into court Kshs.58,553,158/=. They deposited the amount.

2. The respondents' application to enlarge time to file a reference was subsequently heard. On 1st July 2021 it was found not to be merited. It was dismissed with costs.

3. The present application dated 5th July 2021 was by the applicant. It was brought under **section 51** of the **Advocates Act, Rule 7** of the **Advocates Remuneration Order** and **Order 50 rule 1** of the **Civil Procedure Rules**. The application sought that the certified costs be adopted as judgment of the court, and that there be interest at 14% from 31st March 2015 to the date of full payment.

4. On 1st July 2021 the court gave leave to the respondents to appeal the decision refusing them enlargement of time. It also gave them leave to file an application for the stay of the court orders. When the matter came up on 15th July 2021 the respondents through their counsel informed the court that they had not yet filed the application for stay, although they had appealed the decision. The applicant had filed an application to enter judgment on the certificates of taxation. The application had been served but had not elicited any response from the respondents. I asked the parties to exchange written submissions and come today for this ruling. I notice that the respondents, without leave, have filed a response to the application. I will consider it all the same.

5. It is not denied the the certificates have not been satisfied for the longest period. The response to the application was that the applicant did not have instructions from the respondents to file the two succession causes. The response was therefore challenging the entire bills of costs on lack of instructions to the applicant. Quite unfortunately, this is a matter that was settled by the Deputy Registrar and the certificates have not been interfered with by this court.

6. The respondents took advantage in the replying affidavit and in their advocates written submission to attack the court by alleging that it had been unfair and biased against them. This is because the court had refused to enlarge time for them to file a reference. All that I wish to say is that they have appealed the decision of the court, and I wish them well.

7. The issue of retainer cannot be raised at this stage. There was taxation, and there are certified costs. A certificate of costs is final as to the amount of the costs payable. This is what **section 51** of the **Advocates Act** is all about.

8. Interest is awarded to compensate the claimant for having been kept of his money for a long period. Such interest is payable under **rule 7** of the **Advocates Remuneration Order** and **section 26** of the **Civil Procedure Act**. The costs have in this case not been paid since the certificates were issued on 31st March 2015.

9. I consequently enter judgment for the certificate of Kshs.18,759,474/= and the certificate of Kshs.18,760,692/=. Each will be with interest of 14% from 31st March 2015 to the date of full payment.

10. The applicant asked that the Kshs.58,553,158/= deposited by the respondents into court be released to settle the certified costs. This was opposed by the respondents. I have indicated that the certificates have been outstanding since 31st March 2015. Ideally, the applicant should go through the normal execution proceedings. But that will be unduly and unfairly prolonging the day of reckoning on the part of the respondents. Now that that application for stay was not filed, and no stay was obtained in the Court of Appeal, I direct that the amount be released to the applicants as part of his outstanding fees. I consider that when the applicant asked that the amount be deposited as security, the figure was not disputed.

11. Costs shall follow the event.

DATED and DELIVERED at NAIROBI this 22ND day of JULY, 2021.

A.O. MUCHELULE

JUDGE