



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO. 140 OF 2020

AMONDI & CO. ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

COUNTY GOVERNMENT OF KISUMU.....CLIENT/RESPONDENT

RULING

The application before me is premised upon **Section 51** of the **Advocates Act**. It seeks orders to adopt the Certificate of Costs dated 31st March 2021, as a Judgment of this Court.

1. The Applicant also sought interest at the rate of 14% per annum from 17th July 2020, until the taxed costs were paid in full.
2. Finally, the Applicant asked the Court to award them the costs of the application.
3. The Respondent contends that it was only after Judgment is entered and a decree extracted that we can then engage and delve into the issue of the rate of interest and the time from when such interest is payable.
4. On their part, the Applicant asked the Court to award interest from;

“..... the date of filing of the bill for taxation on 17/07/2020”

5. Although that is the prayer on the face of the application, the Applicant submitted thus;

“It is instructive to note that in the bill of costs dated 16/07/2020 filed on 17/07/2020 and served on 21/07/2020, the applicant sought fees pegged on interest at 14% from the date of instructions, and the same suffices pursuant to Rule 7 of the Advocates Remuneration Order.”

6. In my understanding, the said **Rule 7** does not mandate the advocate to seek interest on the taxed costs from either the date when he files his bill of costs or from when the said bill of costs is served.
7. Furthermore, **Rule 7** does not entitle the advocate to recover interest on the taxed costs, from the date when the said advocate was given instructions by his client.
8. **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.”

9. The Respondent has submitted that notwithstanding that Rule, this Court has the discretion to deprive the Applicant of interest altogether. The said submission is premised on the use of the word “*May*” in **Rule 7**.
10. In my understanding of that Rule, it is the advocate who is given the option whether or not he would wish to make a claim for interest on the disbursements and costs in this bill. However, he is also told that should he claim interest, the same shall be payable from the expiry of one month from the date when the bill was delivered to the client.

11. In other words, it was not open to the advocate to claim interest from any date which was earlier than one month from the date when the bill was delivered to the client.
12. The Respondent asked this Court to take into account the fact that it is a public entity, and that therefore, the court ought to excuse them from the payment of interest.
13. In my considered opinion, the fact that the Respondent is a public entity cannot be a basis upon which the advocate may be denied interest to which such advocate was otherwise entitled to.
14. When the Respondent decided to give instructions to the Applicant, they must be deemed to have been aware that they would be required to pay legal fees.
15. If the Respondent had financial or other limitations, which could later impact their ability to pay legal fees, they ought to have either informed the Applicant about that situation, in advance, or they should have negotiated a fee agreement with the advocates.
16. It would be unfair to the advocates who had undertaken work in accordance with the instructions of his client, to be told, later, that the said client would not pay that which the advocate was otherwise entitled to.
17. In this case the advocates filed a Bill of Costs seeking Kshs 1,242,525/=. However, upon taxation, the learned taxing officer awarded the sum of Kshs 39,891/66.
18. There is no record of the date when the advocates first delivered their bill to the client. However, even if such date had been disclosed, I find that the client would have been entitled to refuse to settle it, if it was in accordance with the Bill of Costs dated 16th July 2020.
19. In the circumstances, I hold that it would be unjust to award interest on the taxed costs from a date which was 30 days from when the bill was delivered to the client. I so hold because the client was entitled to reject demands for payment of that very high bill, as the taxing officer later awarded a much smaller sum.
20. In the result, I now enter judgment in favour of the Applicant for Kshs 39,871/66 with interest at 14% per annum from 1st May 2021, (which is 30 days from the date of taxation).
21. The costs of the application dated 24th May 2021 are awarded to the Applicant.

DATED, SIGNED and DELIVERED at KISUMU

THIS 19TH DAY OF OCTOBER 2021

FRED A. OCHIENG

JUDGE