



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. CIVIL APPLICATION NO. 172 OF 2020**

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

**-VERSUS-**

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

**RULING**

The application before me is for the adoption of the Certificate of Costs herein as a Judgment of the Court.

1. On 22<sup>nd</sup> December 2020 the Advocate/Client Bill of Costs was taxed in the sum of Kshs 164,094/=.
2. Pursuant to the provisions of **Section 51 (2)** of the **Advocates Act**, the Advocate/Applicant herein is entitled to Judgment for that amount.
3. However, the Client/Respondent has submitted that the Advocate was not entitled to be awarded interest on the taxed costs.
4. Pursuant to **Rule 7** of the **Advocates Remuneration Order**;

*“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, provided such a claim for interest is raised before the amount of the bill has been paid or tendered in full.”*

5. In interpreting the said rule, the Client has introduced **Section 26** of the **Civil Procedure Act**, and submitted that interest can only begin to run after the Court had granted a Judgment and after a decree had been extracted from the said Judgment.
6. **Section 26** stipulates as follows;

*“(1) Where and in so far as a decree is for payment of money, the court may, in the decree, order interest at such rate as the court may deem reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.*

*(2) Where such a decree is silent with respect to payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”*

7. In my understanding of the provisions of **Section 26**, it is a very broad provision, which vests a wide discretion upon the Court when determining the issue of interest that is awardable when the decree was for the payment of money.
8. The said provision empowers the Court to award a reasonable rate of interest to be paid on the principal amount.
9. The Court may award interest from the date of the suit to the date of the decree.
10. In addition, the Court may award interest for any period before the institution of the suit.

11. Thirdly, the Court has the discretion to award interest on the aggregate sum, from the date of the decree to the date of payment or to such earlier date as the Court thinks fit.

12. Therefore, if **Section 26** of the **Civil Procedure Act** was applicable to taxed costs, the Court would have the discretion to grant interest in 3 segments, as follows;

*(a) Interest before suit was filed;*

*(b) Interest from the date when the suit was filed until the date of the decree; and*

*(c) Interest on the aggregate amount, from the date of the decree until either the date of payment or until such earlier date as set by the court.*

13. In my considered opinion, when the provisions of the **Advocates Act** specify how interest may be awarded on the disbursements and costs, whether by scale or otherwise, it must be deemed that the said provisions oust the more general provisions of the **Civil Procedure Act**. I so hold because it is a cardinal rule of interpretation that when a statute specifies something as being applicable to matters which the statute applies, the said specification ousts other more generalized statutory provisions.

14. I hold that the provisions of the **Civil Procedure Act** cannot oust the more specific provisions of the **Advocates Act** which were enacted to address the issues of Advocates' costs.

15. It therefore follows that under the **Advocates Act**, the Court does not have discretion to award any rate of interest, even if the Court deems such a rate as reasonable in the circumstances. Whilst **Section 26** of the **Civil Procedure Act** authorizes the Court to award any reasonable rate of interest; the **Advocates Act** specifies the rate as 14% per annum.

16. And whilst under the **Civil Procedure Act** the Court has discretion to award interest at 3 different levels, the Court lacks such discretion under the **Advocates Act**.

17. Under the **Advocates Act**, the interest may be awarded from the expiration of one month from the date when the Bill was delivered by the Advocate to the Client.

18. When the discretion of the Court has already been so constrained, I hold the considered view that it would be unjust to the Advocate to either withhold interest altogether or to reduce it on account of the consideration that the Client was a public entity.

19. However, the Advocate is not entitled to interest from the date when he filed the Bill of Costs in Court. I so hold because the quantum sought in the Bill of Costs was much more than the sum which the learned Taxing Officer finally awarded.

20. In my considered view, the Client became aware of the "*Bill*" on the date when the Ruling on Taxation was delivered.

21. **Rule 7** of the **Advocates Remuneration Order** appears to have been designed to allow a Client a period of 30 days from the date when the Advocate delivered his bill. In my considered opinion, justice would be served by allowing the Client 30 days from the date when the Ruling on Taxation was delivered.

22. Accordingly, I order that Judgment be entered in favour of the Advocate/Applicant for the taxed costs, together with interest thereon at 14% per annum, from the expiration of 30 days from the date when the Ruling was delivered.

23. In this instance I peg the 30 days to the date when the Ruling was delivered because the Client/Respondent was in Court when the Taxing Officer delivered the Ruling on Taxation. As the Client was present, it means that immediately after the Taxing Officer pronounced her decision, the Client became aware of the Bill that it had an obligation to settle.

24. Finally, the costs of the application are awarded to the Advocate/Applicant.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF DECEMBER 2021**

**FRED A. OCHIENG**

**JUDGE**