



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

MISCELLANEOUS CIVIL APPLICATION NO. 12 OF 2020

IN THE MATTER OF THE ADVOCATES ACT & THE ADVOCATES

REMUNERATION (AMENDMENT) ORDER, 2014

AND

IN THE MATTER OF RECOVERY OF TAXED COSTS AS BETWEEN

ADVOCATES & CLIENTS

BETWEEN

OKONG'O WANDAGO & COMPANY ADVOCATES.....APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF MIGORI.....RESPONDENT

JUDGMENT

This ruling relates to the Notice of Motion Application dated 10/8/2021, brought under the provisions of Section 51 (2) of the Advocates Act, Cap 16 and Paragraphs 4 & 7 of the Advocates Remuneration (Amendment) Order, 2014.

The applicant, **Okong'o Wandago & Company Advocates** is seeking the following orders: -

- a. The court be pleased to order that the Certificate of Costs issued to the Applicant, as against the Respondent, be converted into a judgement and decree of this court and consequently, a judgement be entered for the applicant against the Respondent, for Kshs. 257,473.91/=.**
- b. Interest does accrue on the sum of Kshs. 257,473.91/=, at the rate of 14% per annum, with effect from 10/7/2019, until payment shall be made in full, as prescribed in paragraph 7 of the Advocates Remuneration Order.**
- c. Costs of this application be awarded to the Advocates/Applicant.**

The application is based on grounds appearing on the face thereof and is supported by the Supporting Affidavit of Marvin Odera, Advocate in the applicant's law firm. He deposed that the respondent retained the applicant's law firm to act for them and to defend their interest in **Migori High Court Constitutional Petition No. 4 of 2016 Benard Ochuodho v Migori County Government**. There is no dispute on the issue of retainer and advocate - client relationship. Subsequently, the applicant issued and served the respondent with an itemized fee - note dated 18/5/2018 on 9/7/2019 (**MO-1**).

Due to the failure of the respondent to honor the fee - note, the applicant filed and served the respondent with a bill of costs dated 16/3/2020. The respondent was served with notices of taxation on three different occasions resting with the notice of taxation dated 30/7/2020 but the respondents did not respond.

The bill was heard on 4/8/2020 and by a ruling delivered on 15/10/2020 the bill was taxed and certified at **Kshs. 257,473.91/=**.

On 25/8/2021, the respondent appointed Matiko Mang'era, the County Attorney to act on its behalf in this matter. The respondent was

served with mention notices for directions on hearing the applicant's application but it failed to attend court.

Section 51 (2) of the Advocates Act reads:-

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.

Paragraph 7 of the Advocates Remuneration Order provides: -

An advocate may charge interest at 14 per cent 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 that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.

Therefore, the applicant is entitled to interest on the taxed amount at the rate of 14% per annum from **16/7/2020** being 30 days from the service of the bill of costs.

I have considered the application, its supporting affidavit and the annexures thereto. It is evident that the respondent was served with a fee note which it failed to settle. Further, it was served with the bill of costs and several taxation notices which it failed to defend. There is also a Certificate of Costs dated 16/2/2021 of **Kshs. 257,473.91/=** which has not been challenged by the respondent even after the County Attorney entered appearance on its behalf. The proceedings were unopposed.

As provided for under Paragraph 7 of the Advocates Remuneration Order, I find that interest rates of 14 % per annum is payable from 16/7/2020 being 30 days from the date which the Bill of Costs was served upon and received by the respondent.

I find that the application has merit and make the following orders: -

a. The Certificate of Costs issued to the applicant, as against the respondent dated 16/2/2021 is hereby converted into a judgement and decree of this court and consequently, a judgement is entered for the applicant against the respondent, for Kshs. 257, 473.91/=.

b. Interest on the sum of Kshs. 257,473.91/=, do accrue at the rate of 14% per annum, with effect from 16/7/2020, until payment shall be made in full.

c. Costs awarded to the applicant.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 16TH DAY OF DECEMBER, 2021

R. WENDOH

JUDGE

Judgment delivered in the presence of

Mr. Odero Advocate for the Applicant.

No appearance for the Respondent.

Nyauke Court Assistant.