



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. 27 of 2017

IN THE MATTER OF THE ADVOCATES ACT (CAP 16 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF TAXATION OF ADVOCATES/CLIENTS COSTS

BETWEEN

MACHARIA-MWANGI & NJERU ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

AZIM ABDULKARIM CHATUR POPAT.....CLIENT/RESPONDENT

ARISING FROM MOMBASA SUCCESSION CAUSE NO. 346 OF 2013

ADVOCATE/CLIENT BILL OF COSTS

RULING

1. By an application dated 31.10.18, Macharia-Mwangi & Njeru Advocates, the Advocate/Applicant seeks that judgment be entered in its favour against Azim Abdulkarim Chatur Popat, **the Client/Respondent** in the sum of Kshs. 5,525,670.43 as per the Certificate of Costs dated 16.10.18 together with interest at the rate of 14% per annum from 10.12.17 until payment in full.

2. The Certificate of Costs was issued pursuant to the taxation of an Advocate/ Client bill of costs dated 21.7.17 for services rendered in Succession Cause No. 346 of 2013, Estate of Abdulkarim Chatur Popat. The Applicant avers that a ruling was delivered on 13.9.18 and the Certificate of Costs which was issued has not been set aside, altered or varied. The Applicant further stated that the taxed amount remains outstanding and continues to attract interest as the Respondent has failed to pay the same.

3. The Application is opposed by the Respondent through his grounds of opposition dated 18.12.18. According to the Respondent an applicant forfeits interest when the same is not raised in the bill of costs. Further, that the Court can only award interest at Court rates and only from the date of the taxation ruling.

4. Parties relied on the pleadings filed. Although the parties filed copies of authorities with their pleadings, they opted not to file written submissions nor did they find it necessary to submit orally. I have considered the Application, the grounds of opposition as well as the said authorities.

5. The Applicant seeks that judgment be entered in its favour in terms of the certificate of costs issued pursuant to the bill of costs filed against the Respondent. The Applicant also seeks interest at the rate of 14% per annum from 10.12.17 until payment in full. The law on taxation of bills of costs is contained in the Advocates Act and the Advocates Remuneration Order. Section 51(2) of the Advocates Act provides as follows:

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.

6. The certificate of costs issued by the taxing officer in favour of the Applicant herein has neither been set aside nor altered by the Court. As per the foregoing provision, the certificate of costs is final as to the amount covered thereby. The provision empowers the Court to make such

order as it thinks fit, including an order that judgment be entered for the sum certified to be due with costs.

7. From the grounds of opposition, it would appear that the Respondent does not dispute the taxed amount. His only quarrel is with the interest claimed. The Respondent argues that because the Applicant did not raise the issue of interest at the time of filing the bill of costs, interest as provided for under Paragraph 7 of the Advocates Remuneration Order is forfeited. The Court can only award interest at Court rates. Further, interest can only be charged from the date of the taxation ruling.

8. Paragraph 7 of the Advocates Remuneration Order allows an advocate to charge interest on his costs and disbursements as follows:

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.

9. The rate of interest which an advocate may charge is set at 14% per annum. This interest is chargeable from the expiration of 1 month from delivery by the advocate of the bill to his client. There is a rider however. The claim for interest must however be raised before the amount of the bill is paid in full.

10. In the present case, no evidence was placed before the Court to demonstrate that the Applicant made a claim for interest before the filing of the bill of costs or at all. In this regard, I am in agreement with Kamau, J. who in the case of Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR, relied on by the Respondent, stated:

As this court held in the cases of HC Misc No 486 and 487 of 2012 E.W. Njeru & Co Advocates (Supra), if an advocate files his Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order. The court can only award the interest at court rates.

11. This position is further reinforced by the holding in Machira & Co. Advocates v Arthur K. Magugu & another [2019] eKLR, where the Court of Appeal had occasion to consider an advocate's entitlement to interest under paragraph 7 of the Advocates Remuneration and stated:

[24] The learned judge found correctly in our view that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per annum at least one(1) month before filing the Bill of Costs.

The appellant relied on a letter from counsel for the respondent to justify his position that the learned judge should have awarded him interest at 14% from the date of taxation. We note that the said letter refers to the decretal sum claimed while the issue of interest has not been addressed. The appellant did not produce a copy of his firm's letter of 9th August, 2001 referred to in the respondents' counsels letter of 20th September, 2001 to support his claim.

[25] Accordingly, we find that the learned judge did not err in finding that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per cent at least one (1) month before they filed their Bill of Costs. They were therefore not entitled to interest at 14%.

12. The Applicant is no doubt entitled to interest on his costs. However, I concur with the Respondent that the Court can only award interest at Court rates and not at the rate of 14% per annum as sought by the Applicant.

13. I now turn to the effective date of payment of the interest? The Applicant seeks to have interest charged from 10.12.17, being 30 days from service of the bill of costs upon the Respondent. For his part, the Respondent contends that the interest can only be charged from the date of the taxation ruling which is 13.9.18.

14. Paragraph 7 of the Advocates Remuneration order provides that an advocate may charge interest from the expiration of one month from the delivery of his bill to the client. In the present case, there is evidence by way of a stamped copy of the bill of costs showing that it was received by the Respondent's advocates on 10.11.17. Accordingly, I am in agreement with the Applicant that interest became payable on 10.12.17, being 30 days from the date the bill was served upon the Respondent.

15. This was the holding in Kithi & Company Advocates v Menengai Downs Limited [2015] eKLR, Mabeya, J stated:

In view of the foregoing, once a judgment is entered on a certificate of costs, the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. For an Advocate to be able to recover this, there must be evidence on record on the date when the bill was served upon the client. In the instant case, the Advocate has claimed from the date of taxation of the Bill. If he succeeds to obtain his judgment, that would be the date when interest of 14% per annum will accrue.

16. In the end, this Court finds that the Application dated 31.10.18 partially succeeds. Judgment is hereby entered in favour of the Applicant as against the Respondent in the sum of Kshs. 5,525,670.43 as per the Certificate of Costs dated 16.10.18 together with interest at Court rates from 10.12.17. Each party to bear own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 6th day of March 2020

M. THANDE

JUDGE

In the presence of: -

.....**for the Appliocant**

.....**for the Respondent**

.....**Court Assistant**