



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 88 OF 2018

GITHINJI, KIMAMO & CO ADVOCATES.....APPLICANT

VERSUS

ENDMOR STEEL MILLERS LIMITED.....RESPONDENT

RULING

1. The application dated 20th August, 2019 seeks the following orders:

- 1. That judgment be entered for the Applicant against the Respondent for the sum of Ksh.57,440/= together with interest thereon at 14% per annum from 25th October, 2018 until payment in full.**
- 2. That the Applicant be at liberty to execute against the Respondent.**
- 3. That costs of this application be borne by the Respondent.**

2. The Applicant's case is that the Bill of Costs herein was taxed at Ksh.57,440/= and a Certificate of Costs issued. That the Certificate of Costs has not been set aside or altered and there is no dispute as to retainer but that the Respondent has failed to settle the same.

3. The application is opposed as per the grounds of opposition dated 19th September, 2019 which states as follows:

“1. The application is a blatant and egregious abuse of the court process and is only meant to circumvent justice.

2. That the Applicant's motion seeks interest at 14% from the date of taxation despite the fact that Section 51(2) of the Act makes express provision on interest; that if there is any entitlement on interest under Section 51(2), the same should be at the expiration of thirty (30) days from the date of delivery of the taxed Bill to the client.

3. The application is devoid of any merit and misconceived.

4. The Applicant ought to file a fresh suit if at all since retainer has always been disputed.

5. The application is frivolous, vexatious and fatally defective.

6. That the Application has no legal basis.

7. That the Application is fundamentally and incurably defective.”

4. I have considered the application, the response to the same and the submissions filed by the respective counsel for the parties.

5. The uncontroverted facts herein are that the Advocate/Client Bill of costs herein was taxed at Ksh.57,440/= and a certificate of Taxation issued. The certificate has not been set aside or varied. This position is supported by the record. The record further reflects that the Bill of Costs was served on the Respondent on 25th October, 2018. Although the Respondent states in the grounds of opposition that the retainer is disputed, the taxation was not challenged as envisaged under Rule 11 of the Advocates Remuneration Order.

6. Section 51 (2) of Advocate Act Cap 16 Laws of Kenya provides as follows:

“(2) 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.”

7. The Advocate was therefore at liberty to file the application herein.

8. Rule No. 7 of the Advocates Remuneration Orders reads 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 advocate is therefore entitled to the judgment and to 14% interest as prayed. Consequently the application is allowed with costs.

Dated, signed and delivered in Nairobi this 29th day of May, 2020

B. THURANIRA JADEN

JUDGE