



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 718 OF 2017

WAIGANJO WACHIRA & CO ADVOCATES.....APPLICANT

VERSUS

PACIS INSURANCE COMPANY LIMITED.....RESPONDENT

R U L I N G

1. The application dated 3rd October, 2019 seeks orders that judgment be entered for the taxed Advocate/Client costs of Ksh.54,135/= contained in the certificate of taxation dated 14th February, 2019 with interest thereon at the rate of 14% per annum with effect from 4th December, 2017 until payment in full.

2. It is averred that the Applicant's Bill of Costs was taxed at Ksh.54,135/= on 14th February, 2019. That a certificate of Costs was issued and the same has not been set aside or varied. That there is no dispute on retainer but that the Respondent has failed to settle the same.

3. The Respondent opposed the application as per the grounds of opposition dated 14th January, 2020 as follows:

“1. That the Applicant is not entitled to the orders sought as its application dated 3rd October, 2019 is misconceived, unmeritorious, in bad faith frivolous and vexatious and the same ought to be dismissed.

2. That this court lacks jurisdiction to enter judgment summarily as prayed through the application as the applicant's remedy lies in filing a formal suit for recovery of the sums claimed.

3. That the applicant's retainer is disputed.

4. That the interest at 14% if any should be from the date of the ruling and not the date of filing the bill of costs for taxation.

5. That the certificate of taxation dated 14th February, 2019 is incompetent and cannot form the basis of entry of judgment in favour of the applicant as it is not a certified as a true copy of the original.

6. That this application is otherwise an abuse of the process of court.

7. That this application is a non-starter and ought to be struck out with costs.

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.54,135/= 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 14th December, 2017. 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 the Advocates 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 cent per annum on his disbursements and costs, whether by scale or otherwise, from expiration of one month from the delivery of the 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 at Nairobi this 29th day of May, 2020

B.THURANIRA JADEN

JUDGE