



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 660 OF 2013

ALICE MUGURE KIMANI P/A

A.M. KIMANI & CO ADVOCATES.....APPELLANT

VERSUS

KINYANJUI NJUGUNA.....RESPONDENT

(Being an appeal from the Ruling delivered on 6th December, 2013 by Hon. I. Gichobi (Resident Magistrate) Chief Magistrate's Court at Milimani Commercial Courts in CMCC No. 4623 of 2013).

JUDGMENT

1. The Appellant herein filed the application dated 26th August, 2013 seeking the following orders:

- 1. That the Defendant's written Statement of Defence filed herein be struck out.**
- 2. That in the result, judgment be entered in favour of the Plaintiff/Applicant as prayed in the plaint.**
- 3. That costs of the suit and the application be awarded to the plaintiff.**

2. The application was premised on the grounds stated therein and the affidavit in support. It was stated that the Appellant, an advocate of the High Court of Kenya, acted for the Respondent on **Thika CMCC 812/04 Bernard Orindo v Drums & Containers Ltd**. That the Respondent withdrew instructions from the Appellant and the Appellant raised a fee note which was not settled. That the Appellant subsequently filed a Bill of Costs which was taxed at Ksh.47,396/= and a Certificate of Costs issued. That the said certificate of costs has not been varied or set aside.

3. The Appellant instituted this suit in the Lower Court vide the plaint dated 18th July, 2013 seeking judgment for the said sum of Ksh.47,396/= costs and interest at 14% per annum until payment in full. A Statement of Defence was filed. The Plaintiff then filed the application seeking to have the Defence struck out.

4. In a replying affidavit filed in opposition to the application, it was stated that the application was incompetent and that the defence filed was strong and raised triable issues. That the Appellant did not take cognizance of the agreed terms between the parties and that the Appellant ended up abandoning the Respondent's cases. It was further averred that the case the subject matter of the taxed amount herein was not concluded and that the suit filed was therefore premature. The claim for interest was also contested. It was further averred that the Certificate of Costs had no nexus with the claim in the plaint.

5. The trial magistrate entered judgment for the Appellant for the sum of Ksh.47,396/=. The rate of interest was awarded at the rate of 14% p.a. from 10th May, 2013 when the Certificate of Costs was served till payment in full. The Appellant was aggrieved by the award of interest. That is what triggered the Appeal herein.

6. In the Memorandum of Appeal, the Appellant raised 4 grounds of Appeal. The same can be condensed into one. That is whether the trial magistrate misinterpreted Rule 7 of the Advocates (Remuneration) Order in failing to allow the interest as prayed in the plaint.

7. The application was canvassed by way of written submissions which I have considered.

8. Rule No. 7 of the Advocates (Remuneration) Order provides 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. In prayer No (c) of the plaint, the Appellant prayed for interest on the taxed sum of Ksh.47,396.40 and costs at 14% per annum as per the Advocates (Remuneration) Order from the 27th December, 2006 until payment in full.

10. In the affidavit in support of the application under consideration, the Appellant annexed a letter dated 27th November, 2006 addressed to the Respondent and stamped as received by the Respondent. The said letter states that the fee note was enclosed therein for settlement. I have considered the contents of the replying affidavit. The averment of service of the fee note remains uncontroverted. The interest applicable in line with Rule 7 Advocates (Remuneration) Order is with effect from 30 days after the service of the fee note, which in the case at hand is with effect from 27th December, 2006 as prayed in the plaint (See example **Kithi & Co. Advocates v Menengai Downs Ltd Nbi Misc. Appl. No. 1069 of 2013** and **Kantai & Co. Advocates v Kenya Bus Services ltd [2006] eKLR.**)

11. The upshot is that the Appeal has merits and is allowed. The ruling by the trial magistrate is hereby set aside and judgment entered for the Appellant as prayed in the plaint. Costs to the Appellant.

Dated, signed and delivered at Nairobi this 17th day of Dec., 2020

B. THURANIRA JADEN

JUDGE