



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & TAX DIVISION

MISC. CIVIL APPLICATION NO. 494 OF 2016

MAINA & MAINA ADVOCATES.....APPLICANT

-VERSUS-

GLOBAL MERC EAST AFRICA LIMITED.....RESPONDENT

RULING

1. The Application for consideration is the Applicant's Notice of Motion dated 1st February 2017 brought under **Order 51 Rule 1** of the **Civil Procedure Rules, 2010, Sections 1A, 1B & 3A** of the **Civil Procedure Act** and all other enabling provisions. The Application seeks orders that:

i. Judgment be entered against the Respondent for the sum of Kenya shillings thirty two thousand, two hundred and fourteen and eighty cents (32,214,80) only being advocate/client costs as taxed on 5th December, 2016 together with interests thereon and the costs of the suit at the rate of 14% per annum from 16th July 2016 until payment in full.

ii. The costs of this application be borne by the Respondent.

2. The Application is based on the grounds on the face of it and supported by the Affidavit of **MAUREEN MAITAI**, an advocate in the Applicant firm, sworn on even date. She deposes that the Applicant filed a bill of costs dated 27th October 2016 for services rendered to the Respondent in drafting and registration of a Debenture on the fixed and floating assets of the company. She avers that the bill of costs was taxed in the sum of Kshs. 32,214.80/= only and a Certificate of Taxation issued to that effect which Certificate was accordingly served on the Respondent via email and the same has to date not been set aside and/or altered. She also deposed that the retainer is not disputed.

3. It is further deposed that as per the provisions of **Paragraph 7** of the **Advocates Remuneration Order**, the Applicant is entitled to charge interest on its costs at the rate of 14% per annum from the expiry of one month after service of the bill upon the client. She contends that they forwarded the bill to the client on 16th June 2016 and has annexed email correspondence to that effect.

4. Further, it is contended that the Applicant has been unable to reach the Respondents despite making efforts to get in touch with them. As such, she deposes that it is only fair and just that the court do grant the orders sought.

5. The Respondent did not file any document in opposition of the Application.

Analysis and Determination

6. The Application was dispensed with by way of oral submissions. The Applicant's Counsel Mr. Mutai reiterated the contents of the application and submitted that the application was served upon the Respondent by way of substituted service pursuant to leave granted by this court. He also noted that the bill was accordingly served on the Respondent and that there was proof to that effect in the form of an Affidavit of Service. The only issue for determination therefore is whether the application is merited.

7. The Applicant seeks entry of judgment for taxed costs. **Section 51(2)** of the **Advocates Act Chapter 16 Laws of Kenya** provides as follows in that respect:

“(2) The certificate of 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.”

8. The Applicant’s advocate/client bill of costs was taxed on 5th December, 2016 and a Certificate of Costs issued. The certificate has never been challenged by the Respondent and has not been set aside and/or altered. The retainer is not disputed. Further, there is an Affidavit of Service on record sworn by one PATRICK NJUE on 14th October, 2020 showing that service of the present application was effected upon the Respondent by registered post and a receipt of postage has been adduced to that effect. However, the Respondent did not respond to the application and also failed to attend court for the hearing of the same. In the circumstances, it is clear that the application is not opposed.

9. As regards the interest sought by the Applicant on the taxed costs at 14% p.a. , **Rule 7 of the Advocates Remuneration Order** provides 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.”

10. I note that the Applicant duly served the Respondent with the bill on 16th June, 2016. It is therefore duly entitled to interest of the taxed costs at court rates.

11. Consequently, the Applicant’s application dated 1st February, 2017 is allowed in the following terms:

a. Judgment is hereby entered in favour of the Applicant as against the Respondent for Kshs. 32,214.80/=.

b. Interest shall accrue at court rates from 16th July, 2016 until payment in full.

c. Costs of the application are awarded to the Applicant.

DATED AND DELIVERED AT NAIROBI THIS 16TH DECEMBER, 2020.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Mr. Mutai for the Applicant.*

2. *No appearance for the Respondent.*