



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. CIVIL CASE NO. 54 OF 2019**

**OTIENO RAGOT CO. ADVOCATES.....APPLICANT/ADVOCATES**

**-VERSUS-**

**WINAM CHEMISTS LIMITED.....RESPONDENT**

**RULING**

The application before me was brought pursuant to the provisions of **Section 51 (2)** of the **Advocates Act**.

1. The Applicant, **OTIENO, RAGOT & COMPANY ADVOCATES** have asked the court to adopt the Certificate of Costs herein as a Judgment of the court.
2. The Respondent, **WINAM CHEMISTS LIMITED** did not respond to the application, although they had been duly served.
3. In effect, the application was un-opposed.
4. Notwithstanding the absence of any answer to the said application, I hold the considered view that the Court was obliged to give due consideration to the question about whether or not the principal sum ought to attract interest from 5<sup>th</sup> August 2018, as claimed.
5. The reason cited by the Applicant, for asking that interest should run from that date is that the Applicant first sent its Proforma Invoice to the Respondent on 5<sup>th</sup> July 2018.
6. **Black's Law Dictionary** defines the word "*Proforma*" as follows;

***" Latin 'for form'.***

- 1.Made or done as a formality and not involving any actual choice or decision.***
- 2.(of an invoice or financial statement) provided in advance to describe items, predict results, or secure approval."***

7. In so far as the document which was sent by the Applicant was a Proforma Invoice, it can be deemed to be an advance description of what the Applicant intended to charge.
8. A proforma invoice does not give rise to any legal obligations upon the person to whom it is addressed.
9. Secondly, the proforma invoice does not give rise to any legal obligations upon the person who sent it.
10. In contrast, an Invoice is deemed to be an asset for the person who sent it. On the basis of an Invoice, the tax authority becomes entitled to demand payment of tax.

11. In contrast, the **Black's Law Dictionary** defines a "*Proforma Invoice*" as;

*"A bill-like document that is sent to a customer to show what the price would be if the customer placed an order."*

12. The Proforma Invoice may look like an invoice or a bill, but it is not.

13. When an advocate has rendered services, he becomes entitled to raise either a fee-note or an invoice.

14. **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."*

15. Whereas the Applicant herein endorsed a Notice upon the Proforma Invoice, that the "*bill*" would attract interest at 14% per annum from the date of the said bill, if it was not settled in full within 30 days, that did not alter the fact that the Proforma Invoice did not constitute the bill or invoice. It definitely looked like a bill, but it was not a bill.

16. In the event, the date when the Proforma Invoice was sent to the Respondent cannot be the point of reference when determining the date from when interest is calculable.

17. Accordingly, I now enter judgment in favour of the Applicant for the taxed costs, in the sum of Kshs 248,172/90 plus interest thereon at 14% per annum from 20<sup>th</sup> June 2020, until payment in full. The date from when interest has been awarded is 30 days from the date of the taxation.

18. I also award to the Applicant, the costs of the application dated 28<sup>th</sup> July 2020.

**DATED, SIGNED and DELIVERED at KISUMU This 16<sup>th</sup> day of December 2020**

**FRED A. OCHIENG**

**JUDGE**