



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISC CIVIL APP NO 475 OF 2017

IN THE MATTER OF THE ADVOCATES ACT

AND

IN THE MATTER OF ADVOCATES CLIENT BILL OF COSTS

BETWEEN

KERONGO & COMPANY ADVOCATES.....APPLICANT

VERSUS

AFRICA ASSURANCE MERCHANG CO LIMITED.....RESPONDENT

RULING

INTRODUCTION

1. The Advocates' Notice of application dated 21st March 2018 and filed on 27th March 2018 was brought pursuant to the provisions of Section 51 (2) of the Advocates Act (Chapter 16 Laws of Kenya), Rule 7 of the Advocates (Remuneration) Order and Section 3A of the Civil Procedure Act and other enabling provisions of the law. It sought the following orders:-

- 1. THAT the judgment be entered for Applicant against the Respondent for Kshs 76,990/= being the taxed and certified costs.**
- 2. THAT the Applicant be awarded interest at court rate (14%) from the 22nd February, 2018 the date when the costs were certified by the Taxing Master.**
- 3. THAT the Respondent do pay the costs of this Application.**

2. The said application was served upon the Client in April 2018. By the time the aforesaid application came up for hearing on 2nd October 2018, the Client had not yet filed any response thereto. Despite the inordinate delay in the client filing its response as aforesaid, this court nonetheless granted it seven (7) days as was requested by its counsel. The matter was fixed for mention on 31st October 2018.

3. When the matter came up for mention on the said date of 31st October 2018, the Client had still not filed its Written Submission. It had, however, filed Grounds of Opposition dated 9th October 2018 in response to the Advocates' present application. The said Grounds of Opposition were filed on 19th October 2018. The client sought a further seven (7) days to file its Written Submissions.

4. This request was vehemently opposed by the Advocates. However, purely in the interests of justice not to shut out the Client from being given an opportunity to be heard, this court granted it a further seven (7) days to file its Written Submission as its advocates had requested. The court condemned it to pay Court Adjournment Fees for having occasioned an adjournment on the said date. The matter was then fixed for mention on 20th November 2018 to confirm compliance of the filing of the said Written Submissions and/or further orders and/or directions.

5. Unfortunately, neither the Client nor its advocate attended court on 20th November 2018. The Client had also not paid the Court Adjournment Fees that had been ordered to be paid as aforesaid. Bearing in mind that the mention date had been taken by consent of both

parties, this court reserved the Ruling of the Advocates' present application.

6. The said Ruling is based on the Respondents Written Submission that were dated 22nd October 2018 and filed on 23rd October 2018.

LEGAL ANALYSIS

7. The Client's Grounds of opposition were as follows:-

- 1. The Certificate of Costs before the court is a copy and not the original.**
- 2. There is no proof of service of the draft Certificate of Costs before extraction as required under Order 21, Rule 8 of the Civil Procedure Rules.**
- 3. There is no proof of service of the Certificate of Costs after extraction as alleged.**
- 4. The award of the taxing master is excessive in the circumstances.**
- 5. No notice of a claim for interest on fees was served upon the Client/Respondent within 30 days of service of the Bill of Costs under Rule 7 of the Advocates (Remuneration) order.**
- 6. This court lacks jurisdiction to award interest as per prayer (b) of the application herein.**

8. The Client did not deny that it was ever served with a draft Certificate of Costs only asserting that there was no proof of service of the said draft Certificate of Costs. What it seemed to aver was that there was no proof that it was ever served with any draft Certificate of Costs. On the other hand, the Advocates were emphatic that they served the said upon the Client.

9. Its argument that the Certificate of Costs before the court was a copy and not the original had no legal basis as copies of documents are what are ordinarily annexed to pleadings. Be that as it may, this court noted that the original Certificate of Costs dated 1st March 2018 duly signed by Hon L Mbacho, the Deputy Registrar of the High Court was in the court file herein. Having said so, it was not clear what the Client's argument on this issue was as it did not file any Written Submissions.

10. It did not also advance any legal arguments supported by case law that the court lacked jurisdiction to award interest. It was also emphatic that the Advocate ought to have served it with a claim for interest within thirty (30) days of service of the Bill of Costs.

11. Whereas there was no proof of service of the draft Certificate of Costs, this court was satisfied that the Client was aware of the issuance of the same. Service of a document is intended to notify a party of its existence.

12. The above notwithstanding, this is not to water down the importance of service of court documents. Lack of proof of service can have serious repercussions. For instance, if judgment were to be entered against a party and that party applied to be granted an order for stay of execution of the judgment on the ground that they had not been served with a certificate, the decree holder would have to demonstrate that indeed it had notified such party of such Certificate of Costs to give it time to satisfy the amount therein without necessarily awaiting entry of judgment. Indeed, such party has a right to be informed of the amount in the Certificate of Costs as soon as possible as delay in settling the same comes with a penalty of additional interest to be paid.

13. Proof of service of the Certificate of Costs is mandatory and of utmost importance as it has a bearing on when interest on the certified amount of costs will start running. Further, if there is no proof of that a client has had notice of interest at fourteen (14%) per cent in accordance with Rule 7 of the Advocates (Remuneration) Order, then the court should apply interest at court rates.

14. The Client's argument that the award of the Taxing Master was excessive in the circumstances was inconsequential as it had not filed a Reference to have the Certificate of Costs set aside in accordance with Rule 11 of the Advocates (Remuneration) order. The proper procedure to challenge the Taxing Master's decision is to file a reference but not to file Grounds of Opposition. The Client's grounds in its Grounds of Opposition would have best been expounded in an affidavit filed in support of a reference before the High Court.

15. The Advocates ably demonstrated that there was an Advocate-Client relationship between them and Client herein for which they ought to be compensated, by way of fees being paid, for the services they rendered to the Client. Indeed, clients ought not to be allowed to get away with not paying advocates' fees after enjoying services rendered by their advocates.

16. In the absence of proof that the Client had filed a reference in accordance with Rule 11 of the Advocates (Remuneration) Order setting aside the Certificate of Costs and bearing in mind that it failed to file Written Submissions and/or to attend court before the Ruling herein could be reserved, this court had no option but to enter judgment in favour of the Advocates against it as prayed in the Advocates' present application.

17. As this very court held in the case of **Lubullelah & Associates Advocates vs NK Brothers Ltd [2014] eKLR**, Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya provides as follows:-

“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 recovered thereby; and the court may make such order in relation thereto as it thinks fit,

including where the retainer is not disputed, an order that judgment be entered (sic) for the sum certified to be due with costs.”

18. Turning to the issue of interest, the Advocates claimed interest at fourteen (14%) per cent. Rule 7 of the Advocates (Remuneration) Order stipulates that:-

“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.”

19. An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the Advocates Remuneration order. As the Advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum. This court determined that the Advocates herein would be entitled to interest at court rates.

DISPOSITION

20. For the foregoing reasons, the upshot of this court’s Ruling was that the Advocates’ Notice of application dated 21st March 2018 and filed on 27th March 2018 is hereby granted in terms of Prayer No (1) therein. Interest will be at court rates from 6th April 2018 when the Client was served with the present application in which a copy of the Certificate of Costs had been annexed as there was no proof that the said Certificate of Costs had been served upon the Client earlier than 6th April 2018.

21. It is so ordered.

DATED and DELIVERED at NAIROBI this 14th day of March 2019

J. KAMAU

JUDGE