



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MISC. APPLICATION NO. 108 OF 2012

IN THE MATTER OF HAIDERALI KANJI SAYANI

&

IN THE MATTER OF ZERAKHANU HAIDERALI SAYANI

CECIL G. MILLER T/A

MILLER & COMPANY ADVOCATES.....APPLICANT

VERSUS

PARIN SHERRIF

NAZLIN NIZAR JETHA

YASMIN JANMOHAMMED

ANAR HANALI.....RESPONDENTS

RULING

1. The applicant rendered legal services to the respondents in two Succession Causes. They were in the estate of Zerakhanu Haiderali Sayani and in the estate of Haiderali Kanji Sayani. The instructions were given by the respondents. On 18th January 2012 the respondents withdrew the instructions but did not settle the applicant's legal fees. The applicant filed respective Bills of Costs which were taxed and allowed at Kshs. 18,759,474/- and Kshs. 18,760,692/-, respectively. The costs were certified. On 8th February 2019 the applicant brought the present application seeking that:-

- a) the costs certified by the Deputy Registrar on 31st March 2015 be adopted as judgment of the court;
- b) an order does issue that the costs be paid with interest at court rate from 31st March 2015 until payment in full, pursuant to **Rule 7 of the Advocates Remuneration Order**; and
- c) costs of the application be paid.

2. On 9th May 2019 the respondents filed a notice of Preliminary Objection on the grounds that:-

- a) the application was bad in law, an abuse of court process and ought to be dismissed;
- b) the respondents filed an application dated 17th July 2015 for extension of time to file reference against the taxation by the Deputy Registrar and for stay of execution of the taxation pending the hearing and determination of the intended reference, which application has not been heard and determined; that the result of that application will substantially affect the present application;
- c) the application for extension of time to file reference has not been heard because the applicant has not filed written submissions

as had been directed by the court; and

d) there was no order for payment of interest, and **Rule 7 of the Advocates Remuneration Order** does not give the court jurisdiction to award costs after the delivery of a ruling by a Taxing Officer.

It was sought that the application be dismissed.

3. There is no dispute that, as matters stand, the Deputy Registrar taxed the Bills as shown above and, in respect of each, issued a Certificate of Costs. The Certificates have not been set aside, or altered, and there is no dispute as to retainer. The pending application by the respondents for extension of time to file a reference has not been heard or decided, and no stay of execution was granted.

4. The applicant's application was made under **Section 51 of the Advocates Act (Cap. 16)**. It is trite law that under the **Section**, this court has the discretion to enter judgment on a Certificate of Costs which has not been set aside or altered, where there is no dispute as to retainer (**Musyoka & Wambua Advocates -v- Rustam Hira Advocate [2006]eKLR**).

5. On the question of interest, there is no dispute that the certified costs have not been paid. The taxation is still being challenged. Under **Rule 7 of the Advocates Remuneration Order:-**

“An advocate may charge interest at 14 per cent 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, provided that such claim of interest is raised before the amount of the bill shall have been paid or tendered in full.”

It was sworn that beginning 31st March 2015 the respondents have been aware of the Certificates of Costs but have not paid the same.

6. In **Machira & Co. Advocates –v- Arthur K. Magugu & Another, Civil Appeal No. 30 of 2016**, the Court of Appeal at Nairobi observed that:-

“23. Section 26 of the Civil Procedure Act and Section 51 of the Advocates Act empower a Judge or Judicial Officer to award any rate of interest retrospectively and/or from any date that the court may consider fair and just in the circumstances of the particular case.”

In the case, the Court of Appeal reiterated that **Rule 7 of the Advocates Remuneration Order** provides for the payment of interest where the client who has been issued the Certificate of Costs but has failed to pay the amount therein.

7. I listened to Mr. G. Ouma for the applicant and Mr. Y. Ouma for the respondents on the application. I have considered what they submitted on the application. I am satisfied that the application is merited. Consequently, I allow the same and enter judgment in the Certificate of Costs issued on 31st March 2015 for Kshs. 18,759,474/- and in the Certificate of Costs issued on 31st March 2015 for Kshs. 18,760,692/-. Each Certificate shall be with interest at the rate of 14% per annum from 1st May 2015 upto the day of full payment. The respondents shall pay costs of this application.

DATED and DELIVERED at NAIROBI this 27TH DAY OF JUNE, 2019.

A.O. MUCHELULE

JUDGE