

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 37 OF 2017

ATAKA, KIMORI & OKOTH ADVOCATESAPPLICANT

VERSUS

JOSELINE MWANGO JOHNRESPONDENT

RULING

The applicant filed a bill of costs relating to services rendered to the respondent which bill was taxed at Kshs. 221,189/= and signed on 28th February, 2018 and a certificate of taxation issued.

There is now an application before me by way of Notice of Motion under Section 51 (2) of the Advocates Act and Order 51 Rule 1 of the Civil Procedure Rules that Judgment be entered in favour of the applicant in the said sum, and that it be ordered that the taxed sum do attract interest at court rates from the date of taxation until payment in full.

The application is supported by an affidavit sworn by the advocate for the applicant and grounds set out on the face of the application. The application is opposed and the respondent has filed grounds of opposition.

I have heard both counsel. The only dispute relates to the charging of interest. It is true that when the bill of cost was filed, the applicant did not pray for interest. Ordinarily however, such a prayer is generally not included in the application.

The ruling relating to the bill of costs was delivered on 7th December, 2012. Both counsel were represented. In fact the respondent sought stay of execution for 30 days which was granted. That notwithstanding, the costs were not paid. On 18th April, 2019 a copy of the certificate of taxation was sent to the respondent's advocate, and a request made for settlement within 14 days from the date of that letter. This was not done, prompting the present application.

It is true that the certificate of taxation indicated the sum taxed was "**all-inclusive against the respondent**". It is not clear whether by those words the applicant was prohibited from either raising further costs, or imposing interest on the taxed costs. Rule 7 of the Advocate's Remuneration Order reads 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, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full."

The applicant has the discretion to impose the interest on the taxed costs. There is no other interpretation that can be assigned to those provisions. Although the advocate for the respondent was present when the ruling on taxation as delivered, it is only in the month of April, 2019 when the certificate of taxation was forwarded to her advocates. That amount has not been paid to date.

Assuming without deciding that it may take years for such a settlement to be made, will the applicant be faulted for demanding interest? I believe not. Going by the demand made on 18th April, 2019, I believe the applicant is entitled to interest beginning one month from the expiry of 14 days contained in that notice. That is to say, from 14th May, 2019. Accordingly, this application succeeds in the following terms.

Judgment is hereby entered in favour of the applicant in the sum of Kshs. 221,189/= as reflected in the certificate of taxation. The applicant is entitled to interest at 14 % from 15 May, 2019 per annum until payment is made. The applicant shall have costs of this application.

Dated, signed and delivered at Nairobi this 25th Day of July, 2019.

A. MBOGHOLI MSAGHA

JUDGE