



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

CIVIL CASE NO.292 OF 2005

JULIUS S.K. CHEMJOR.....PLAINTIFF

-VERSUS-

POSTAL CORPORATION OF KENYA.....1ST DEFENDANT

F.O OKELLO.....2ND DEFENDANT

RULING

1. Judgment in the suit was delivered on the 25th June 2009 by the Hon. Maraga J (as he then was). The plaintiff was awarded a sum of Kshs.5,042,400/= plus costs and interest on the costs. The amount was reduced on appeal to Kshs.3,529,680/= on the 24th June 2016.

Costs to the plaintiff were taxed at Kshs.953,881/= and a certificate of taxation issued on the 23rd January 2018 and paid on the 17th August 2018, and paid months thereafter. The judgment sum is paid and settled.

2. Both parties agree that the only issue for determination is **whether interest on the costs ought to be paid and if so the rates and the effective date - Prayer No 4.**

3. In his Notice of motion application dated 25th September 2018 the plaintiff, in the main, seek **Prayer**

3 –That pending hearing of this application the Honorable court direct the firm of Robson Harris & Co Advocates to provide statement of accounts of funds held in NIC Bank Ltd joint Account No 1003895443 as per cause 3 and 4 of the consent order dated the 13th March 2017.

4. That this court do issue a decree in terms of the certificate of costs dated 23rd January 2018 together with applicable interest at court rates subject to payment of the requisite court fees.

5. That in the alternative the Postmaster General be cited for contempt of court for failure to comply with the decree for payment of costs issued by this Honourable Court.

4. I have considered the affidavits in support and opposition as well as the submissions.

Prayer No.3 is overtaken by events. The 1st defendant has provided the relevant NIC Bank statements annexed to his Replying affidavit sworn on the 26th November 2018 as Ext ER -2.

5. By a consent order dated the 13th March 2017 and executed by the three Law firms representing the parties, the money deposited in the joint account was distributed to the parties as agreed thereon. **Prayer No. 3** is thus settled.

6. Under Clause 5 thereof, it is recorded that

*Costs awarded to the plaintiff was to be agreed or taxed. No agreement was reached. The bill was therefore taxed and a certificate of taxation issued on the 23rd January 2018 in the sum of Kshs.853,881/=. This record is clear that no objection was raised or a reference filed to the Judge in terms of **Rule II of the Advocates Remuneration Order.***

7. **Rule 7** thereof requires that the certificate of taxation be delivered to the respondent and that, it is only after expiry of one month after the delivery that a claim for interest on the taxed costs may be raised, provided that the claim for interest is raised before the amount has been paid or tendered in full.

The issue of interest on the costs was pronounced in the judgment.

8. The bill of costs by the applicant has not been provided to the court. It is not clear, nor is there any submission by either party that interest on the costs was factored during the taxation.

What is clear is that the taxed costs were not paid immediately, but seven months thereafter.

Section 7 of the Act would ordinarily take effect one month thereafter. An order for interest on the costs would therefore be appropriate. – See **Miscl. Appl. No. 1069/2013 Kithi & Co. Advocates –vs- Menengai Downs Ltd (2015) e KLR., Misc. App. No. 934/2011 Francis Mwanza Mulwa –vs- Afrisons Export Ltd & Another (2015) e KLR.**

9. In the cases, the courts rendered that if the costs are not paid after the expiry of one month of delivery of the certificate of taxation, interest becomes payable at court rates or as stated by the judge in the judgment.

The Respondent/defendant however submits that upon payment of the taxed costs, and upon consent entered into by the parties, the suit was duly settled.

10. I have read the Court of Appeal ruling (R.N. Nambuye JA) on the issue. It is dated the 23rd February 2017.

The judge decreed that the decretal sum of Kshs.3,529,680/= will attract interest at court rates at 12 % from the date of judgment in the High Court upto date of the expiry of that rate, after which date it would attract interest at 14% from the date of operation of this rate until payment in full.

11. The court interest rates as at 2017 is no doubt 14% per annum. The consent order dated 13th March 2017 is therefore not conclusive in view of clause No.5, but which was settled upon taxation of the plaintiff's costs. See certificate of taxation dated 23rd January 2018.

I do not agree with the defendant/respondent that the suit is fully settled. The defendant paid the taxed costs after seven months.

12. My understanding of the judgment, which is supported by the decisions I have cited above, and others, I shall state hereafter, is that interest at court rates, being 14% shall accrue to the taxed costs one month after the certificate of costs was served upon the defendants.

13. The date of the certificate of taxation is important, so is the **proviso under Rule of the Advocates Remuneration Order.**

There being no dispute as to the date of the certificate being 23rd January 2018 and the same having been paid seven months thereafter.

I shall upon my discretion apply the 1st March 2018 as the effective date where upon interest ought to apply at court rates (14%) on taxed costs.

- See **William Kinyangi Onyango –vs- IEBC & 2 Others (2013) e KLR**

14. Consequently, I direct that the Deputy Registrar of this court do calculate and apply interest on the taxed costs of Kshs.853,881/= at 14% per annum from the 1st March 2018 to the date of this ruling.

That amount is what shall be payable by the defendants to the plaintiff. I direct that a decree on costs be so drawn and issued upon payment of the requisite court fees.

15. In the circumstances, I find no merit on **prayer No.5** to cite the Postmaster General for contempt of court orders.

The result is that the application dated 25th September 2018 is allowed in terms of Order No. 4 stated above, the rest of the prayers having been resolved.

I order no costs on the application to either of the parties.

Delivered, Signed and Dated at Nakuru this 25th Day of July 2019.

.....

J.N. MULWA

JUDGE