



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 48 OF 2015

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES.....APPLICANT/ADVOCATE

AND

KENYA ORIENT INSURANCE LIMITED.....RESPONDENT/CLIENT

RULING

1. By a Notice of Motion dated 15th April, 2019, brought under the provisions of Section 51 (2) of the Advocates Act, Rule 7 of the Advocates Remuneration Order and Order 51 Rule 1 of the Civil Procedure Rules, the Applicant/Advocate seeks the following orders:

1) Judgment be entered for the sum of Kshs. one hundred and ninety-five thousand and nine hundred and sixty and sixty-eight cents (Kshs. 195,960.68) in costs certified by the Deputy Registrar on 20th March, 2019

2) The outstanding balance of Kshs. 61,250.80 be paid together with interest at 14% per annum from 4th June, 2015 being one month from the date of the delivery of the bill of costs to the Respondent pursuant to Rule 7 of the Advocates Remuneration (Amendment) Order as follows:

a) Interest on the sum of Kshs. 134,256/- from 04th June, 2015 till 06th April, 2018 when payment was made

b) Interest on the outstanding balance of Kshs. 61,250.80 from 04th June, 2015 till payment in full

3) That costs of this application be awarded to the Applicant/Advocate

2. The Application is premised on the grounds among others that the Respondent/Client Deputy Registrar taxed the Advocates' costs at Kshs. 195,960.68 out of which Kshs. 61,250.80 remains unpaid.

3. The Application is supported by an affidavit sworn on 15th April, 2019 by MARTIN G. MWANIKI. He avers that the Applicant/Advocate acted for the Respondent/Client in **KISUMU CMCC 985 OF 2001 CHANNAN AGRICULTURAL CONTRACTORS V KENYA ORIENT INSURANCE**, that the Advocates' bill of costs was taxed at Kshs. 195,960.68 out of which Kshs. 61,250.80 remains unpaid. Annexed to the affidavit is the bill of costs received by the Respondent/Client on 05th May, 2015; Certificate of Taxation dated 20th March, 2019 and a copy of a letter dated 06th April, 2018 forwarding a sum of Kshs. 134,256/- to the Applicant/Advocate marked **MGMI, 2 and 3** respectively.

4. In response to the application, the Respondent/Client through its advocate filed submissions dated 15th June, 2019 in which it contends that the Applicant/Advocate is not entitled to interest at 14% for the reason that it did not claim it before filing the bill of costs. Reliance was placed on **Machira & Co. Advocates v Arthur K. Magugu & another [2019] eKLR** and **Otieno, Ragot & Company Advocates v Kenindia Assurance Company Limited [2016] eKLR**.

5. Regarding interest, I have considered the provisions of Rule 7 of the Advocates Remuneration Order which provides: -

"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." (emphasis added).

6. Contrary to the finding in **Otieno, Ragot & Company Advocates v Kenindia Assurance Company Limited** (supra) that the bill denoted to under the provisions of Rule 7 of the Advocates Remuneration Order does not refer to the bill of costs, the court of Appeal in **Machira v Magugu** (supra) specifically stated that the bill thereof is the bill of costs. Having so found, I find that interest at 14% is payable as long the amount of the bill has not been paid or tendered in full.

7. The bill of costs was delivered to the Respondent/client on 05th May, 2015. The sum of Kshs. 134,256/- was forwarded by a letter dated 06th April, 2018 and the balance of Kshs. 61,250.80 remains unpaid to date.

8. The upshot of this is that the Notice of Motion dated 15th April, 2019, succeeds and is allowed in the following terms:

a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 195,960.68

b) Interest on the sum of Kshs. 134,256/- shall be paid at 14% from 05th June, 2015 until 06th April, 2018 when the said sum was paid

c) Interest on the outstanding balance of Kshs. 61,250.80 shall be paid at 14% from 05th June, 2015 until payment in full

d) The Advocate will also have the costs of this application.

DATED, DELIVERED AND SIGNED ON THIS 25th DAY OF July, 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant/Advocate - Mr Anyul/ Mr Kenya

Respondent/Client - N/A