



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. CIVIL CASE NO. 36 OF 2019**

**ODHIAMBO OWITI & CO. ADVOCATES ..... APPLICANT/ADVOCATE**

**VERSUS**

**DOMINION FARMS LIMITED ..... RESPONDENT**

**RULING**

The application before me was brought pursuant to **Section 51** of the **Advocates Act**.

1. The Applicant is a firm of Advocates, who had been retained by the Respondent, **DOMINION FARM LIMITED**.
2. Having carried out their duties in respect to the instructions of the Respondent, the Applicant raised a Fee Note.
3. Ultimately, the Applicant's Advocate/Client Bill of Costs was taxed on 20<sup>th</sup> June 2019, and the learned Taxing Officer awarded the sum of Kshs 1,797,260/19. A Certificate of Costs was drawn up and duly signed by the Taxing Officer.
4. The said Certificate forms the foundation upon which the application dated 8<sup>th</sup> July 2019 was advanced.
5. In accordance with the provisions of **Section 51 (2)** of the **Advocates Act**;

***“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 covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”***

6. In the matter before me, the Certificate of Costs has not been set aside or altered.
7. Secondly, there is no dispute about retainer.
8. In the circumstances, I find that the Certificate of Costs is a solid foundation upon which the Court may proceed to enter Judgment; and so I do proceed to do so.
9. Accordingly, I now order that Judgment be and is hereby entered in favour of the Applicant, against the Respondent, for the sum of Kshs 1,797,260/19, together with the costs of the application dated 8<sup>th</sup> July 2019.
10. The Applicant has invited the Court to award Interest at the rate of 14% per annum from 17<sup>th</sup> June 2019, which is said to be a date that is one month from the date when the Applicant presented its Proforma Request Note to the Respondent.
11. Pursuant to **Rule 7** of the Advocates (Remuneration) Order;

***“An Advocate may charge interest at 9% 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.”***

12. In my understanding, a “Proforma Request Note” is not equivalent to a Bill.
13. The **“Black’s Law Dictionary”** defines Proforma as;

***“1. Made or done as a formality and not involving any actual choice or decision.***

***2. (Of an invoice or financial statement) provided in advance to describe items, predict results or secure approval.”***

14. A Proforma Invoice or Bill would thus constitute an advance document, upon which no legal obligation attaches. It is the precursor to the actual Invoice or Bill.

15. An Invoice or a Bill is the statement of the amount owed by one person to another.

16. Once an Invoice or Bill is raised, it give rise to tax implications for the person raising it, as it is deemed to be an asset to him.

17. In contrast, a Proforma Invoice or Bill would not give rise to tax implications or obligations.

18. Pursuant to the provisions of **Section 45(1)** of the **Advocates Act**, an Advocate and his Client may enter into Agreements with respect to remuneration. It is stated that they may –

***“(a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate’s remuneration in respect thereof;***

***(b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate’s instruction fee in respect thereof or his fees for appearing in court or both;***

***(c) before, after or in the course of any proceedings in a criminal court or court martial, make an agreement fixing the amount of the advocate’s fee for the conduct thereof: and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.”***

19. Therefore, if there had been a fee agreement between the advocate and the client, the same would have been enforceable.

20. The fact that the Advocate had to lodge a Bill of Costs for taxation is confirmation that there was no Agreement between the Advocate and his Client on the fees payable.

21. Accordingly, I find that until the Bill of Costs had been taxed, neither the Advocate nor the Client would know the quantum of fees payable.

22. In the circumstances, justice demands that when a Bill of Costs is taxed, the interest payable on the sum certified by the Taxing Officer should become due in reference to the date of taxation, rather than any date preceding the said taxation.

23. In this case, the Ruling on taxation was rendered on 20<sup>th</sup> June 2019.

24. Thereafter, the Client was served with the present application on 17<sup>th</sup> July 2019. Annexed to the application was the Certificate of Costs.

25. There is no evidence that the Certificate of Costs was served upon the Client prior to 17<sup>th</sup> July 2019.

26. I therefore hold that it was not until 17<sup>th</sup> July 2019 that the Advocate notified the Client about the quantum of fees payable.

27. Accordingly, the interest on the taxed costs shall run from 17<sup>th</sup> August 2019, which is a date that is one month from when the Advocate notified the Client about the quantum of costs that is payable.

28. In the result, I order that interest shall be payable at Court Rates from 17<sup>th</sup> August 2019.

**DATED, SIGNED and DELIVERED at KISUMU This 28<sup>th</sup> day of November 2019**

**FRED A. OCHIENG**

**JUDGE**