

IN THE HIGH COURT AT KISUMU

MISC. CIVIL APPLICATION NO. 37 OF 2011

BETWEEN

OTIENO RAGOT & COMPANY ADVOCATES ADVOCATES/APPLICANT

AND

KENINDIA ASSURANCE COMPANY LIMITED CLIENT/RESPONDENT

RULING

1. The application before me is the Notice of Motion dated 21st August 2017 seeking judgment for the Kshs 108,381.00 being the advocate/client costs certified by the Deputy Registrar on 20th July 2017. The applicant also seeks interest at 14% p.a from 15th March 2011 until payment in full.
2. The dispute between the parties revolves around the issue of interest because the respondent contends that it paid Kshs. 108,381.00 by cheque on 4th December 2017. It submits that there was accord and satisfaction and that interest is not due.
3. The provision governing interest is **Rule 7** of the *Advocates Remuneration Order* (“**Rule 7**”) which states;

An Advocate may charge interest at 14 percent 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.

4. Under **Rule 7** an Advocate is entitled to charge interest once the client is duly notified of this intention when the bill has been delivered. A client may avoid interest by settling the bill immediately otherwise the claim for interest accrues for keeping the advocate out of its money. On the other hand, the client should not be penalized by interest if there is delay in prosecuting the bill of costs. **Rule 7** does not state the time interest begins to run hence it is left to the discretion of the Court (see *D. Njogu and Company Advocates Vs. Kenya National Capital Corporation* NRB HC Misc. No. 21 of 2005[2006]eKLR and *Otieno Ragot and Company Advocates v Kenya Airports Authority* KSM HC Misc. No. 95 of 2011[2017]eKLR).
5. I have looked at the supporting affidavit of Moreen Alinaitwe sworn on 21st August 2017 and the annexed bill of costs dated 2nd February 2017. It makes a claim for interest and it was served on the client on 13th February 2011. The respondent did not contest these facts. I therefore find and hold that the claim satisfies the condition for awarding interest under **Rule 7**. Accordingly, the advocate is entitled to interest on the costs at 14% p.a.
6. As to the time the interest should start running, I note that the bill of costs was filed on 2nd February 2011. After the matter was adjourned on 13th May 2011, it was only revived on 9th August 2016 upon threat by the court to dismiss the case for want of prosecution. The advocates were tardy in prosecuting the matter hence the client should not be penalized for their conduct. In the circumstances, I award interest from 6th September 2016 when the matter was fixed for taxation in the presence of both parties until the date of payment.
7. For the reasons I have set out above, I enter judgment for the sum of **Kshs 108,381.00/= with interest**

at 14% p.a. from 6th September 2016 to 4th December 2017. Since the principal sum has been settled, the respondent will only pay the interest for that period.

8. As each party has won and lost in equal measure, there shall be no order as to costs.

DATED and **DELIVERED** at **KISUMU** this 26th day of **January** 2018.

D.S. MAJANJA

JUDGE

Ms Alinaitwe instructed by Otieno Ragot & Company Advocates for the applicants/ advocates.

Ms Aron instructed by Okong'o Wandago and Company Advocates for the respondent/ client.