



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO. 84 OF 2016

OTIENO YOGO & COMPANY ADVOCATES APPLICANT/ADVOCATE

VERSUS

KISUMU WATER AND SEWERAGE CO. LIMITED RESPONDENT/CLIENT

JUDGMENT

1. BY a notice of motion dated 9.2.18, brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya and Order 11 (3 (1) (h) of the Civil Procedure Rules; Applicant prays for Orders:-

1. THAT the Honourable Court be pleased to convert the certificate of costs dated issued on 1.2.18 into a decree and Judgment together with interest at 14% p. a from 5.2.18 until payment in full

2. THAT the costs of this Application be awarded to the Applicant

2. The motion is premised on the ground that retainer is not denied and on the supporting affidavit of Erick Ojuro, Advocate of the High Court of Kenya, sworn on 9.2.18 to which is annexed the certificate of costs marked *EOO – 1*.

3. The Application is opposed on the grounds set out in an affidavit sworn on 5.3.18 by Everlyne Opiyo, the Respondent's Human Resource and Administration Manager who avers that Applicant was instructed by Housing Finance Company of Kenya Limited and not by the Respondent.

4. I have considered the affidavits and submission on record. In the case of *Musyoka & Wambua Advocates Vs Rustam Hira Advocate (2006) eKLR* it was held:-

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has discretion to enter Judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....

5. Paragraph 11 of the Advocates Remuneration Order provides that:

“Where a party is aggrieved by the decision of a taxing officer, he is required to object in writing by requesting the taxing officer to give reasons for the items of taxation that he is objecting to and thereafter file reference to this Court.”

6. In the present case, the Respondent objects to the entire bill and alleges that the Advocate was instructed by Housing Finance Company of Kenya Limited and not by the Respondent. In my view, the Applicant was required to file a reference to this Court to challenge the decision of the taxing officer and not come by way of a replying affidavit. As it stands now the Certificate of Taxation has not been set aside or altered. In the circumstances, I see no reason to deny the Advocate, Judgment as sought.

7. 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”

8. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of the Bill of Costs. There is evidence that the bill of costs was received by the Respondent on 12.7.16 and thirty (30) days from the delivery of the bill to the client expired on

12.8.16 but Applicants seeks interest from 5.2.18.

9. The upshot of this is that the notice of motion dated 9.2.18 succeeds and is allowed in the following terms:

- a. **Judgment is hereby entered for the Advocate against the Respondent for Kshs.139,450/=**
- b. **Interest shall accrue on the taxed costs at 14% per annum from 5.2.18 until payment in full**
- c. **The Advocate will also have the costs of this Application.**

DATED, DELIVERED AND SIGNED THIS 25th DAY OF *May*, 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistants - Felix

Appellant - N/A

Respondent - Mr. Bagada holding brief for Mr. Njoga