



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 78 OF 2017

IN THE MATTER OF THE ADVOCATES ACT CAP 16

AND IN THE MATTER OF THE ADVOCATE – CLIENT BILL OF COSTS

BETWEEN

NYAUNDI TUIYOTT & CO. ADVOCATES.....ADVOCATES/APPLICANT

-VERSUS-

AFRICAN MERCHANT ASSURANCE CO.LIMITED.....CLIENT/RESPONDENT

RULING

1. This ruling relates to a Notice of Motion Application dated 2nd March 2018, brought under the provisions of Section 51 (2) of the Advocates Act (Chapter 16 laws of Kenya) Rule 7 of the Advocates Remuneration Order, Section 3A of the Civil Procedure Act and other enabling provisions of the law.

2. The Applicant is seeking for order as here below stated:-

a) That Judgment be entered for the Applicant against the Respondent for Kshs223, 181, being the Advocates taxed and certified costs in *Milimani, CMCC No. 1990 of 2011*.

b) That the Applicant be awarded interest at the rate of 14% per annum, from 22nd March, 2017 (being the 30th date from the date on which the Bill of Costs was served upon the Respondent) as provided for at Part 1 Paragraph 7 of the *Advocates Remuneration Order and Rules*.

c) That the Respondent pays the costs of this Application.

3. The Application is supported by an Affidavit dated 2nd March 2018, sworn by Thomas Onyambu, the Managing Partner of the Applicants' law firm. He deposed that, the Respondent retained the Applicants' firm vide a letter dated 1st July 2011, to render legal services, in the case *Milimani, CMCC No. 1990 of 2011*. Subsequently, the Applicant prepared a Bill of Costs (herein "the Bill") dated 22nd February 2017, and served upon the Respondent on the same date.

4. The Bill was taxed and certified at Kshs 223, 181.00 and served upon the Respondent on 23rd February 2017. That the Bill attracts interest at the rate of 14% per annum from the 30th day of service of the Bill upon the Respondent, as provided for as Part 1, Paragraph 7 of the *Advocates Remuneration order and Rules*. It is therefore fair and just that the orders sought herein be granted.

5. However, although the Application was duly served upon the Respondents, they did not respond thereto. The Court then ordered the matter be disposed of vide submissions. Once again the Respondent was served but did not file any submissions. The Applicant filed submissions arguing that the Respondent was first served with the Application on 27th March 2018, but has never filed a response to the same, as such the Application before Court stands unopposed. Therefore judgment be entered for Kshs Kshs 223, 181.00, being the taxed and certified costs in *Milimani, CMCC No. 1990 of 2011*.

6. That, Section 51 (2) of the Advocates Act, states that:-

"The certificate of the taxing officer by whom a 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."

7. The Applicant further submitted that, it has annexed the instruction letter which clearly shows a Retainer is not in dispute. Further, the Certificate of Costs herein has not been set aside or altered nor a Reference filed. Therefore the amount of the costs herein is conclusive. Reference was made to the case of Ahmednasir Abdikadir & Co. Advocates –vs- National Bank of Kenya Limited [2005] eKLR.

8. The Applicant also relied on under Rule 7 of the Advocates Remuneration Order Rule 7 to claim interest. It states that;

“An advocate may charge interest at 14% per annum on his disbursements and cost, 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 it raised before the amount of the bill has been paid or tendered in full”.

9. Therefore the Applicant is entitled to interest on the amount taxed on the Bill at the rate of 14% per annum applicable from 22nd march 2017, being 30 days after the date of service of the Bill.

10. I have considered the subject Notice of Motions Application and the Affidavit in support and I find that there is a Certificate of Taxation dated. I find that as annexed to the supporting Affidavit a copy of the Bill of costs that was Taxed, an Affidavit of service by John Angwa as evidence that the Respondent was serviced with the Notice of Taxation. Also annexed is a Certificate of taxation issued by the Hon. Deputy Registrar dated 21st February 2018, in the sum of Kshs 223, 181.00. The Certificate was brought to the knowledge of the Respondent vide a letter 22nd February 2018.

11. There is no challenge against the Taxation and/or the Certificate of Taxation. The Application was heard unopposed. As regards the interest rates, I find that the provisions of Rule 7 of the Advocates Remuneration Rules provides for interest rates at 14% per annum, payable form the 30th day from the date on which the Bill of Costs was delivered. The Bill of Costs herein was received by the Respondents on 22nd February 2017, therefore interest is payable from the 22nd March 2017.

12. I therefore find that the Application herein has merit and allow it as prayed.

13. Ordered accordingly.

Dated, delivered and signed on this 26th day of July, 2018 in open Court.

GRACE L. NZIOKA

JUDGE

In the presence of :

Ms. Ochoki for Mr. Onyambu for Applicant

Mr. Outa for Ms Akola for Respondent

Dennis Court Assistant