



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL APPLICATION NO 18 OF 2018

ALEX OTIENO OMAYA t/a OMAYA & Co. ADVOCATE....APPLICANT

VERSUS

PIEDMONT INVESTMENTS LTD.....RESPONDENT

JUDGMENT

1. By a notice of motion dated 12.7.18 brought under Section 50(1) of the Civil Procedure Rules, the applicant prays for orders: -

1) THAT judgment be entered for the applicant against the respondent for Kshs. 755,987.60

2) Interest be charged at court rates from 23.4.14 until payment in full

3) THAT the costs of this application be provided for

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of Alex Otiemo Omayo, advocate sworn on 12.7.18. He avers that the Advocate-Client Bill of Costs was taxed at Kshs. 755,987.60 and a certificate of taxation marked AOO 1 was issued for the said sum. The application was served but was not opposed since the respondent was not represented on the hearing date.

3. 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.....”

4. In the present case, there is no allegation that the Advocate had no instructions to act for the client in the matter and so, there is not, and there cannot be, a dispute as to retainer. 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.

5. An Advocate is entitled to interest on the amount taxed on an Advocate/client Bill of Costs. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Block Fee Note or the Bill of Costs. This is clearly set out in 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.”

6. There is evidence that the Notice of Taxation was served on 24.1.18 and applicant is therefore entitled to 14 % interest from 24.2.18.

7. In the result, the notice of motion dated 16.5.17 is allowed in the following terms:

a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 755,987.60

b) Interest shall accrue on the taxed costs at 14% per annum from 24.2.18 until payment in full

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

DATED AND DELIVERED IN KISUMU THIS 27th DAY OF September 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant - Mr. Kimbo/Mr Oreaya

Respondent - N/A