



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 203 of 2017

BETWEEN

BRUCE ODENY & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

AND

GEM GEN POWER CO. LTD.....1ST RESPONDENT/CLIENT

WALTER EDWIN OMINDE.....2ND RESPONDENT/CLIENT

JUDGMENT

1. By a notice of motion dated 14.6.18, brought under Section 51 of the Advocates Act Cap16 Laws of Kenya; the applicant prays for orders THAT: -

a. The taxation order dated 11.6.18 be deemed as a judgment of this court and a decree for the payment of the costs taxed together with interest do issue

b. 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 sworn on 14.6.18 by Bruce O. Odeny, advocate of the High Court of Kenya. He avers that the bill of costs which relates to formation of Gem Gen. Co. Ltd on instructions of the 2nd respondent was taxed on 24.5.18 for the sum of Kshs. 234,157.64 and a certificate of taxation (Marked BOO-1) was issued for the said sum. He additionally avers that the clients have not paid the said amount and the applicant requests for judgment for the entire sum.

3. When the application came for hearing on 27.9.18, Mr. Nyamweya, advocate for the client requested for time to file a response to the application there was no response to the application. I fixed the application for Judgment on 25.10.18 and directed the respondents to file their response before then. At the time of writing this judgment, no response had been filed. The application is therefore unopposed and there is thus no dispute as to retainer.

4. Regarding interest, 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.”

5. The rate of interest awardable is applicable from 30 days after the date of service of the Bill of Costs. There is no evidence to show when the Bill of Costs was served. I will therefore apply 3.10.2017 when the respondents' counsel entered appearance as the date of service of the Bill. Thirty (30) days from 3.10.17 expired on 3.11.7.

6. The upshot of this is that the notice of motion dated 14.6.18, succeeds and is allowed in the following terms:

a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 234,157.64

b) Interest shall accrue on the taxed costs at 14% per annum from 3.11.17 until payment in full

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

DATED AND SIGNED IN KISUMU THIS 25th DAY OF October 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant - N/A

Respondent - N/A