



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 191 OF 2017

ONSONGO & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

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

JUDGMENT

1. By a notice of motion dated 25.8.17, brought under Rule 13 of the Advocates Remuneration Order, 2019; the applicant prays for orders:-

a) THAT the certificate of costs dated arising out of the taxation be converted into a judgment and a decree be issued accordingly

b) THAT interest on taxed costs be awarded at 14% p.a until payment in full

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of Richard B.O.Onsongo, Advocate of the High Court of Kenya, sworn on 28.8.17. He avers that on instructions from the client, applicant acted in **MASENO SRMCC NO. 61 OF 2010 ESTHER AKINYI OCHIENG VERSUS DICSON NDUNGU KIREMBE**. He avers that the bill of costs in respect of services rendered was taxed for the sum of **Kshs. 43,848/-** and a certificate of taxation was issued for the said sum on 8th August, 2018. He further avers that the client has not paid the said amount and the applicant requests for judgment for the entire sum.

3. When the application came for hearing on 30.10.18, the respondent's counsel submitted that the application was not opposed.

4. 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. There is no 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.

6. 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.”

7. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of Costs. There is no evidence to show when the Bill of Costs was served. I will therefore apply 19th December, 2017 when the respondent's counsel entered appearance as the date of service of the Bill. Thirty (30) days from 19th December, 2017 expired on 19th January, 2018.

8. The upshot of this is that the notice of motion dated 25.8.17 succeeds and is allowed in the following terms:

a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 43,848/-

b) Interest shall accrue on the taxed costs at 14% per annum from 19.1.18 until payment in full

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

DATED AND SIGNED IN KISUMU THIS 20TH DAY OF DECEMBER 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For the Applicant /Advocate - Mr Muia/Mr Onsongo

For the Respondent/Client - Ms Barasa