



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APPLICATION NO. 96 OF 2016

JACKSON OMWENGA & CO ADVOCATESAPPLICANT

VERSUS

EVEREST ENTERPRISES LTD RESPONDENT

RULING

The applicant/advocate has moved this court by way of a notice of motion dated 4th July, 2016, seeking the following orders:

1. *That the sum of KShs.211,574/= being taxed costs be made the judgment of the court.*
2. *That the taxed costs of KShs.211,574/= be paid with interest at the rate of 14% from 26.03.2007 being the date of instructions until payment in full pursuant to paragraph 7 of the Advocates Remuneration Order.*
3. *That the costs of the application be provided for.*

The application is based on the following grounds:

- a) *That the costs were taxed by the taxing master on the 10th March, 2016.*
- b) *That the certificate of costs was issued on the 27th June, 2016 and;*
- c) *There's no reference pending.*

It is supported by the affidavit of **JACKSON OMWENGA** advocate/applicant sworn on the 4th day of July 2016. He avers that the advocate-client bill of costs was taxed on the 10th March, 2016 at KShs.211,574/= and since the taxation, the client/respondent has not objected to the taxation. He further avers that the taxed costs should be paid with interest from the date of instructions being 26th March, 2007 until payment in full as per the provisions of paragraph 7 of the **Advocates Remuneration Order**.

The respondent has opposed the application on the grounds that:

- i. *There is no justification for the prayer for interest at 14% on the certified cost from the date of 26th March, 2007.*
- ii. *That without prejudice to the foregoing, the taxed costs cannot under the law, earn interest on*

VAT.

The parties filed their respective submissions.

Looking at the application and the grounds of opposition, the only issue in contention is the interest payable on the taxed amount and in particular whether the applicant is entitled to interest at 14% and the date from which he is so entitled.

The applicant cited the *Advocates Remuneration Order par 7* which provides as follows:

“An advocate may charge interest at 14% per annum on his disbursement 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.”

He submitted that the bill was tendered to the respondent and the same was ignored and/or not settled. That the applicant proceeded to have the bill taxed by the Deputy Registrar and a certificate of costs was issued. He relied on the case of *KITUI & CO ADVOCATES V MENENGAI DOWNS LTD, (NRB MISC APP NO. 1069/2013)* in which the court held that taxed costs is liable to attract interest at 14% per annum from 30 days after service of the bill and not from the date of taxation. He also relied on the case of *OTIENO RAGOT & CO ADVOCATES V NATIONAL BANK OF KENYA LTD, (KSM MISC APP NO. 61/2015)* where the court held:

“In my view, the bill referred to in this rule is the advocates final bill setting out his disbursements and costs which he then requires the client to pay but not which he intends to file for taxation.”

That according to the applicant, he raised his fee note on 18th January, 2013, it was served upon the respondent, and the same is shown as item no. 95 on the client/advocate bill of costs filed in court on the 11th March, 2016. That the client did not raise any objection on this item when the taxation was done.

On interest on VAT, it was submitted that the certificate of costs does not disclose the element of VAT and that the same is in respect of taxed costs of the advocate.

On his part, counsel for the respondent submitted that the *Advocates Remuneration Order par 7* calls for evidence from the advocate on the date the bill was served. He argued that the applicant has provided no such evidence in the application or supporting affidavit. He averred that, there being no evidence provided of when the bill was served upon the client, if at all, then interest should be payable from the date the bill of costs was filed in court.

He relied on the case of *KANTAI & CO ADVOCATES V KENYA BUS SERVICE LTD (2006), eKLR, NRB MISC APPL NO 859/2005*, in which the court held:

“Now, as the applicant did not give particulars as to the date when they delivered their bill to their client, the best I can do in the circumstances is to assume, as I have done, that the Bill of Costs was filed in court after the advocate had waited for payment for over one month.”

He also cited the case of *SG MBAABU & CO ADVOCATES V HON TOLA KUJA (2006), eKLR NRB MISC APPL NO. 104/2005*, where the court held:

“The applicant did not prove that it had raised the claim of interest from the respondent. That being so, the applicant cannot get interest as claimed but will be awarded interest at court rates from the date of judgment.”

I have duly considered the application and the submissions by the learned counsels. As the court had stated earlier, the only contention is the interest. I have perused the *Advocates Remuneration*

(Amendment) Order Rule 7. Under the said rule, an advocate can only charge interest from the expiration of one month from the delivery of the bill to the client providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.

To comply with that provision, the applicant must prove two things:

a) That one month has expired from the time he delivered his bill to the client.

b) He had raised his 'claim' for interest before the amount of the bill has been paid or tendered in full.

Though the applicant has stated that he delivered his bill to the respondent and the same was ignored and/or not settled, there is absolutely no evidence to prove when it was so delivered. In his submissions, he has made reference to item No. 95 in the bill of costs. The particulars under that item shows; drawing fee note to client on 18th January, 2013, but that was just the drawing.

The court has not been told when the same was delivered to the client. Similarly, the court has not been told whether the applicant raised the claim for interest with the respondent.

In the absence of such evidence, the applicant cannot get interest as claimed but will be awarded interest at court rate from the date of filing the Bill of Costs. In the upshot, judgment is entered for the applicant in the sum of KShs.211,574/-. The said amount to earn interest at court rate from the date of filing of the Bill of Costs.

Dated, signed and delivered at Nairobi this 20th day of April, 2017.

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L. NJUGUNA

JUDGE

In the presence of:

.....**for the Applicant**

.....**for the Respondent**