



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

MISCELLANEOUS CAUSE NO. 471 OF 2013

IN THE MATTER OF THE ADVOCATES ACT

AND

IN THE MATTER OF TAXATION OF COST BETWEEN ADVOCATE & CLIENT

MASIKA & KOROS ADVOCATES.....ADVOCATES/APPLICANTS

Versus

CHINA WUYI CO. LIMITED.....CLIENT/RESPONDENT

RULING

1. Through a Notice of Motion dated 10th June, 2016, the Advocates seek that Judgement be entered in their favour against the Client for the sum of Kshs.5,840,333.00 together with interest thereon at 14% per annum from 1st November 2013 till payment in full. The Application is brought, inter alia, under the Provisions of section 51(2) of The Advocates Act.

2. The Advocates Bill of Costs was first taxed on 10th September, 2014 but that was followed by an objection by the Advocates. On 3rd December 2014, the Court ordered for a retaxation. That retaxation happened on 19th May 2016 and a Certificate of Taxation for the sum of Kshs.5,840,33.00 was issued.

3. The Motion is resisted and in a Replying Affidavit of Lin Xiu Qiao sworn on 5th July, 2016, the Client states that at the onset of their relationship with the Advocates, Professional fees was agreed at Kshs.900,000/= whereupon a deposit of Kshs.500,000/= was paid. The fees was in respect to instructions by the Clients for the Advocates to represent them on an Appeal lodged from the Public Procurement Authority.

4. Later, Mr. Qiao depones, the Advocates presented them with a Bill of Costs dated 1st November 2013 claiming fees of Ksh.116,046,997.40. That sometime in November 2014, the Advocates and Client renegotiated the fees and a final settlement reached at Kshs.2,262,600/=. That this was duly paid on 19th November 2014.

5. The Clients express shock that, on **8th June 2016**, they were served with a letter of 7th June 2016 in

which the Advocates enclosed a Certificate of Costs for Kshs.5,840,333/=. The clients complain that they were never served with a Hearing Notice for the Retaxation or otherwise invited to those proceedings.

6. In an Affidavit sworn on 3rd August 2016, Counsel Alex Masika denies any such agreement.

7. In the absence of a written Agreement between the Advocates and the Clients it is the word of one against the other. However, the Advocates are in a position of strength as they hold a Certificate of Taxation. While it has been argued by the Clients that the Advocates should conduct themselves with integrity (Article 10(2)(c) of The Constitution), there is no evidence upon which this Court will believe the Clients and not the Advocates and vice versa.

8. From the Court Record, the Clients do not attend the Taxation on 1st October 2015. However the Deputy Registrar proceeded after remarking,

“The Affidavit of Service dated 14th September 2015 shows that the Respondent was duly served. The matter to proceed as scheduled”

9. Even if it is true that the Clients learnt of the outcome of the Taxation just two days before the current Motion was filed, it has not been explained why the Clients have not sought to set aside the Proceeding that went on in their absence. If the Clients were aggrieved with the conduct of the Advocates, then they should have sought to set aside those proceedings and stay the Motion before Court until their plea for setting aside is heard.

10. At this point there would be no reason for this Court not to enter judgement for the Advocates in terms of the Certificate of Costs. However, on looking at the Bill of costs, there was no credit given for the amounts already paid by the Clients. This would be Kshs.2,762,000/=. Mr. Masika, confronted with this, did not controvert it. The Clients should be given credit for this sum.

11. There is also a prayer for interest on the judgment sum at 14% per annum from 1st November 2013 till payment in full. Rule 7 of The Advocates Remuneration Order provides:-

“An advocate may charge interest at 14% per cent 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, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full”.

12. As to when interest should run, I take the following cue from Ochieng J. in **D. Njogu & Company Advocates Vs. Kenya National Capital Corporation** [2006] eKLR (recently followed by Majanja J. in **Otieno Ragot & Company Advocates Vs. Kenya Airports Authority** [2017]eKLR:-

“In my considered view, it would be wrong to calculate interest from the date when the bill was sent to the client, regardless of the fact that such a bill was then watered down through taxation. If clients had to pay interest regardless of subsequent reductions on their bill, advocates would not have the incentive to charge the correct fee notes on the first occasion. It is for this reason that I hold, that the date from when interest should be calculated should be pegged to the date when the advocate sends the correct feenote. And by the ‘correct feenote’ I mean the bill which is in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client does not dispute, or the bill which is in accordance with the sums awarded by either the taxing officer or by the Deputy Registrar in a Certificate of Costs”

13. What is taken as the correct assessment of the Bill was the Taxation of 19th May 2016. The costs will attract interest from that date but in working out the amount now due regard will be given to how much and when the Client rendered some part payment.

14. The Application of 10th June, 2016 is allowed to the extent above stated, that is,

14.1) Judgement shall be entered for the sum of Kshs. 5,840,333.00 less any money paid.

14.2) Interest at 14% per annum on the balance from 19th May 2016.

14.3) Cost of this Application to the Advocates.

Dated, Signed and Delivered in Court at Nairobi this 18th day of May,2017.

F. TUIYOTT

JUDGE

PRESENT;

Masika for Advocates

Ochieng for Client

Alex - Court Clerk