



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO 309 OF 2015

OTIENO, RAGOT& COMPANY ADVOCATES..... APPLICANT

VERSUS

COUNTY GOVERNMENT OF KISUMU.....RESPONDENT

JUDGMENT

By a notice of motion dated 25.4.17, brought under Section 51(2) of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

- a. THAT the certificate of costs dated 22.3.17 in respect of the order made on 22.3.17 for the sum of Kshs. 548,422.20 be adopted as judgment and decree of this Honourable Court**
- b. THAT the applicant be awarded interest accrued on the costs at 14% per annum from 12.12.15 until payment in full**
- c. THAT the costs of this application be borne by client/respondent**

The motion is premised on the grounds on the body of the application and the supporting affidavit of David Otieno, Advocate of the High Court of Kenya, sworn on 25.4.17. He averred that he filed an Advocate-Client Bill of Costs which was taxed at KShs. 548,422.20 and a certificate of taxation was issued for the said sum. That the Respondent has not paid the said amount and the applicant requests for judgment for the entire sum. The application is not opposed.

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.....”

In the present case, there is no allegation that the Advocate had no instructions to act in the matter for the client 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.

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.”

For an Advocate to be able to recover interest; there must be evidence on record on the date when the bill was served upon the client. In the instant case, the notice of taxation of the bill of costs was served on 2nd November 2015. One month from the delivery of the bill to the client expired on 1st December 2015 by applicant prays for costs from 12.12.15.

The upshot of this is that notice of motion dated 25.4.17 succeeds and it is hereby ordered as follows:

- a. Judgment is hereby entered for the advocate against the Respondent for **Kshs. 548,422.20**
- b. Interest shall accrue on the taxed costs at 14% per annum from 12.12.15 until payment in full
- c. The Advocate will also have the costs of the application.

DATED AND DELIVERED ON THIS 21st DAY OF June 2017

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Clerk FELIX

Applicant ALINAITWE

Respondent N/A