



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISC. CIVIL APPLICATION NO 244 OF 2016

OLEL ONYANGO INGUTIAH & COMPANY ADVOCATES..... APPLICANT

VERSUS

A.O.BASID LIMITED.....RESPONDENT

JUDGMENT

By a notice of motion dated 20.3.17, brought under Section 51(2) of the Advocates' Act. Cap 16 Laws of Kenya and all enabling provisions of the Law; the applicant prays for orders:-

- a. THAT the Honourable Court be pleased to enter judgment for the sum certified in the certificate of costs issued by this court on 10.3.17 in favor of the applicant together with interest at 14% per annum from 15.1.17 until payment in full**
- b. THAT the costs of this application be awarded to the applicant**

The motion is premised on the grounds on the body of the application and the supporting affidavit of Charles Onyango Onyango, Advocate of the High Court of Kenya, sworn on 20.3.17. Attached to the affidavit is a certificate of taxation for Kshs. 87,109/- dated 10.3.17.

When the application came for hearing on 25.7.17, the respondent was not represented although it had been served with a hearing notice. The application is therefore 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 for the client in **KISUMU CMCC 38 OF 2014 Joseph Ogak Nyapola v A.O. Basid Ltd** for which costs were taxed 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.

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.”

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 evidence that the bill of costs in this matter was sent to the respondent's Nairobi office on 16.12.16. It is unlikely that it was received on the same date. I shall therefore give an allowance of 7 days for delivery which takes us to 23.12.16 and therefore find that thirty (30) days from the delivery of the bill to the client expired on 22.1.17.

The upshot of this is that the notice of motion dated 20.3.17 succeeds and is allowed in the following terms:

- a. Judgment is hereby entered for the advocate against the Respondent for Kshs. 87,109/-
- b. Interest shall accrue on the taxed costs at 14% per annum from 22.1.17 until payment in full
- c. The Advocate will also have the costs of this application.

DATED AND DELIVERED ON THIS 27th DAY OF July 2017

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - FELIX

Applicant - N/A

Respondent - N/A