



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISC. CIVIL APPLICATION NO 336 OF 2015

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

VERSUS

KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT

JUDGMENT

By a notice of motion dated 3.4.17, brought under Section 51 of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

- a. THAT the certificate of costs dated 20.3.17 in respect of the order made on 20.3.17 for the sum of Kshs. 50,703/- 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 25.12.15 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 Moreen Alinaitwe, Advocate of the High Court of Kenya, sworn on 3.4.17. She averred that the client instructed the advocate to act for it in ***Nyando SRM CIVIL CASE No. 338 of 2006***. That the bill of costs dated 25.11.15 was forwarded to the client. That the bill of costs was taxed on 20.3.17 for the sum of Kshs. 50,703/- and a certificate of taxation was issued for the said sum. That the client has not paid the said amount and the applicant requests for judgment for the entire sum.

When the application came for hearing on 19.7.17, Ms. Ojwang for the client conceded to prayer (a) and submitted that interest on costs was opposed on the basis of averments contained in a replying affidavit sworn by Joseph Gachigua on 7.7.17 in which he avers that the principal sum has been paid in full and that interest is therefore not payable.

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 no to show when the bill of costs in this matter was served. Assuming that the Bill of Costs was served on or about 16.12.15 when the respondent’s counsel entered

appearance; thirty (30) days from the delivery of the bill to the client expired on 15.1.16.

The upshot of this is that the respondent's submission that interest is not payable goes against clear provisions of the law and it is unsustainable. The notice of motion dated 3.4.17 succeeds and is allowed in the following terms:

a) Interest shall accrue on the taxed costs at 14% per annum from 15.1.16. until 25.4.17 when the taxed costs were paid in full

b) 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 MR. Nyongo holding brief for the respondent.