



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

MISC APPLICATION NO. 20 OF 2013

MAINA & MAINA ADVOCATES.....APPLICANT

VERSUS

EDWARD MWANGI MACHARIA.....RESPONDENT

RULING

The Applicant filed a Notice of motion dated 4th August, 2016 seeking orders that;

- (a) Judgment be entered against the Respondent for the sum of Kenya Shillings Two Hundred and Thirty Two Thousand , Six Hundred and Ninety (Kshs. 232,690/=) only being Advocate/ Client costs as taxed on 18th January, 2016 plus interest at 14% p.a, and
- (b) The Costs of this Application be borne by the Respondent.

The Application is supported by the affidavit of Kenneth Kirimi and the grounds are; that a Certificate of Taxation for the amount of Kshs.232, 690/= was issued on 18/01/2015 and the retainer was disputed by the Respondent via an application dated 10/12/2015 which application was dismissed by Hon. Justice Sergon on 22/07/2016. The said Certificate of Taxation and a demand to pay were served upon the Respondent on 19/01/2016.

In response to the application, the Respondent filed a Replying Affidavit and avers that the Applicant does not state the amount of money already paid to him by the Respondent, that the taxation was not proper since service was effected on Edward Mwaniki Macharia and not Edward Mwangi Macharia, that there is a mix up of the dates on when the 14% interest is claimed and that he filed a Notice of Appeal against the ruling of Hon. Justice Sergon of 22/07/2016 hence this application should not be allowed.

I note that there is a mistake of names which originated from the Notice of Taxation dated 24th June, 2015. The case number is the same in all the documents and its only the name that is different and it would be prejudicial to dismiss the Application on such a technicality as the Respondent cannot be said to have suffered any prejudice because of mistake in the names. In any event, service was effected by way of registered post on his last known address and he is not denying that the postal address is his.

The Respondent submits that he has filed a notice of Appeal in respect of the ruling delivered on 22/07/2016 and hence this Application should not be allowed. The law is very clear, under order 42 rule I of the Civil Procedure Rules that no appeal shall operate as a stay of execution or proceedings under a decree or order appealed from. The fact that the Respondent filed a Notice of Appeal cannot therefore act

as a stay of these proceedings.

The subject Bill of Costs was taxed on 19th November, 2015 and the Certificate of Taxation issued on 18th January, 2016. In essence it is one and a half years since and it is in the interest of justice that this matter is resolved. Having considered the instant application and the Respondents response, I see no reason why the application should not be granted.

Rule 7 of the Advocates Remuneration Order provides for interest on taxed Advocate/Client bills of cost and states that;

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.

For an Advocate to claim interest there must be evidence of service of the bill upon the client as provided for under rule 7.. In the instant case, the Postal Corporation receipt shows that the same was posted to Edward Mwangi Macharia by Maina and Maina Advocates and its dated 25th January, 2016.

In the upshot, the application succeeds and judgment is hereby entered for the Applicant against the Respondent for Ksh. 232,690/= together with interest at 14% per annum from 25th February, 2016 until payment in full.

The applicant shall get the costs of the application.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 24th Day of **November, 2017.**

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L. NJUGUNA

JUDGE

In the Presence of

..... For the Applicant

..... For the Respondent