



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 188 OF 2015

IN THE MATTER OF TAXATION BETWEEN ADVOCATE & CLIENT

BETWEEN

O.M. ROBINSON & CO ADVOCATES.....APPLICANT

AND

COUNTY GOVERNMENT OF MOMBASA.....RESPONDENT

RULING

1. The application before me is by way of Notice of Motion dated 23rd May, 2016 seeking prayers that:-

i) Judgment be entered for the applicant against the respondent for Kshs 171,813.98/= being the sum taxed and certified by the Deputy Registrar on 11th February, 2016 as due to the applicant together with the interest thereon;

ii) Costs of the application be provided for.

It was anchored on the grounds on the body of the application and the supporting affidavit of Robinson Onyango Malombo.

APPLICANT'S SUBMISSION

2. Mr Wafula held brief for Mr Malombo for the applicant in seeking entry of judgment against the respondent for the sum of Kshs.171, 813.98/= being the sum taxed and certified by the Deputy Registrar as legal costs due to the applicant.

3. It was submitted that the applicant represented the respondent in SRMCC No. 1863 of 2013 where the value of the subject matter was Kshs.1,661,489.00/=. Mr Wafula referred to paragraph 4 of the applicant's affidavit to show that the bill of costs was not contested by the respondent and that the Taxing Master gave a ruling on 11th February, 2016, where she taxed the said bill at Kshs. 171,813.98/=

4. The Court's attention was drawn to paragraphs 5, 6 and 7 of the applicant's affidavit in which he deposes that the court issued a certificate of costs on 15th March, 2016 for the said sum but the respondent on being served with the same on 27th April, 2016, had failed to settle the same.

5. The Court was informed that no reference has been filed to the High Court and there has been no response in opposition to the application. Mr Wafula prayed that the application be allowed.

ANALYSIS AND DETERMINATION

The issues for determination are:-

(i) If the certificate of costs in this case is final; and

(ii) If the applicant is entitled to interest.

6. Section 51(2) of the Advocates Act stipulates as follows:-

“The certificate of the taxing officer by whom any bill has been taxed shall unless it is set aside or altered by the court, be final as to the amount of costs recovered thereby; and the court may make such order in relation thereto as it thinks fit, including where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

7. I am satisfied that the respondent was served with the certificate of costs on 27th April, 2016 as contained in the affidavit of service dated 29th April, 2016. The respondent was equally served with the present application which had a hearing date for 11th July, 2016. The respondent filed no response to contend that the certificate of costs dated 15th March, 2016 was either set aside, altered or that there is a matter pending in court appertaining to the certificate of costs. It is my finding that the applicant is entitled to the orders sought.

8. The applicant has claimed an award of interest. Rule 7 of the Advocates Remuneration Order provides that:-

“An Advocate may charge interest at 14% per disbursement and costs, whether by scale or 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.” (emphasis added)

9. In the case of **Muri Mwaniki & Wamiti Advocates vs John Ngigi Nganga & Another [2014] eKLR**, Judge Gikonyo had the following to say:-

“My understanding of Rule 7 of the Advocates Remuneration Order is that interest is chargeable from the expiration of one month from the delivery of the bill of costs by the advocate to the client but before the amount of the bill is paid or tendered in full. The reference point is delivery of the bill. Evidence of delivery is necessary. There are two inextricable conditions here; that the bill should have been delivered and not paid within one month thereof. That means if the amount of the bill is paid before expiry of one month from its delivery no interest shall be payable under the bill. To my mind Rule 7 of the Remuneration order does not refer to the certificate of costs but to the bill of costs. However, each case should be decided on its merits and circumstances...”

10. In the instant application the element of interest was not provided for in the bill of costs. I find that the applicant is not entitled to interest at the rate of 14%. The deponent in his affidavit dated 23rd of May, 2016 is silent on when he delivered his bill of costs to the respondent. In the absence of the said information, I will award interest as from the date of filing of the present application.

11. The upshot of the foregoing is that:-

(i) Judgment is hereby entered against the respondent for the sum of Kshs. 171,813.98;

(ii) Interest on the taxed amount shall be at court rates payable with effect from 23rd May, 2016 and;

(iii) The respondent will bear the costs of this application.

It is so ordered.

DELIVERED, DATED AND SIGNED at Mombasa in open court on this 30TH day of AUGUST, 2016.

NJOKI MWANGI

JUDGE

In the presence of

Mr. Malombo for the applicant

No appearance for the Respondent

Ms Rose Echor Court Assistant