



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC NO. 198 OF 2019

**DENNIS K. N. MAGARE & BEN MUSUNDI P/A MAGARE MUSUNDI
& CO. ADVOCATESADVOCATE/APPLICANT**

-VERSUS-

PERMINDER SINGH MANKU1ST RESPONDENT

KEWAL CONTRACTORS LIMITED.....2ND RESPONDENT

RULING

1. Before this Court is a Notice of Motion dated 27th October, 2021 by the Advocate/Applicant brought under the provisions of **Order 11 Rule 3 and 50 Rule 1 of the Civil Procedure Rules, Section 1A and Section 3A of the Civil Procedure Act and Section 51(2) of the Advocates Act and all other enabling provisions of the law**. The application seeks orders that judgment be entered against the Respondents for **Kshs. 177,772.8/-** being the taxed and certified costs. The Applicant also seeks for interest and costs of the said Application.

2. The Application is based on the grounds on the face of the same and the Supporting Affidavit of **Ben Musundi** advocate sworn on 27th October, 2021. The grounds advanced in support of the Application are that the Advocate bill of costs was taxed on 21st September 2021 and that there is no pending dispute as to the said amount and hence therefore judgment be entered as prayed.

3. The Respondents did not file any response but during the hearing of the Application, **Ms. Nyaribo learned counsel** appeared and made oral submissions on their behalf.

4. On 19th January 2022, **Ms. Njomo learned counsel** made oral submissions for the Applicant. She submitted that the bill had not been settled to date and she urged the Court to grant the prayers sought and further to grant interest and costs. In support of her case, she concluded by referring to the following case, where the court had granted similar orders; **Nyabena Alfred t/a Nyabena Nyakundi & Company Advocates v Tourism Promotion Limited t/a Serena hotel [2018] eKLR**.

5. **Ms. Nyaribo** opposed the Application and submitted that judgment should not be entered against the Respondents since the Respondents have filed separate bankruptcy proceedings **IN CAUSE NO. E006 OF 2021, IN THE MATTER OF PERMINDER SINGH MANKU** which is yet to be concluded.

6. I have considered the Application and the Supporting Affidavit. **Section 51 (2) of the Advocates Act** provides that,

“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 the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

7. In this matter, the Respondents did not file any evidence to support the sentiments made by their counsel during the hearing of their application. The Court was also not furnished with any order for stay against these proceedings. The Respondents further did not dispute the bill. In the absence of any dispute to the the Certificate of Taxation dated 26th October 2021 this Court will therefore enter judgment against the Respondents for the said taxed costs of **Kshs. 171,772.8/=**.

8. As to the interest, Regulation 7 of the Advocates (Remuneration) Orders provides that,

“7. 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 such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

9. The wording of this regulation is clear that for an Advocate to charge interest, there must have lapsed a period of one month after the bill was delivered to the Client. The Regulation is also specific that the claim for interest should have been raised. In the instant case, there was no evidence adduced to confirm whether the Applicant had raised the claim for interest with the Respondents. As I have held in previous similar matters namely; *Mulekyo & Co. Advocates vs Peter Mutua Kingoa [2021] eKLR* and *Muriu Mwaniki & Co. Advocates vs Wedge Wood Supplies (K) Ltd [2021] eKLR*, I have emphasized that Regulation 7 provides that the bill must not only be served but a claim for interest should also be specifically raised by the Applicant. In the instant case, basing on the aforementioned circumstances, I am not able to make an award on interest.

10. On the issue of costs, courts have ultimate discretion. Litigation must come to an end and for that reason, I will direct each party to bear its own costs of the Application.

11. In conclusion, the application therefore stands allowed only in terms of prayer number 1.

12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF FEBRUARY 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Sirma h/b for Mr. Musundi for the Advocate.

Ms. Nyaribo for the Respondents.

Court Assistant; Caroline Nafuna.

E. K. WABWOTO

JUDGE